

Office Supreme Court, U. S.  
**FILED.**

MAY 31 1910

JAMES H. MCKENNEY,

CLERK.

IN THE  
SUPREME COURT  
OF THE  
UNITED STATES

OCTOBER TERM 1909

THE STATE OF OKLAHOMA,

*Plaintiff,*

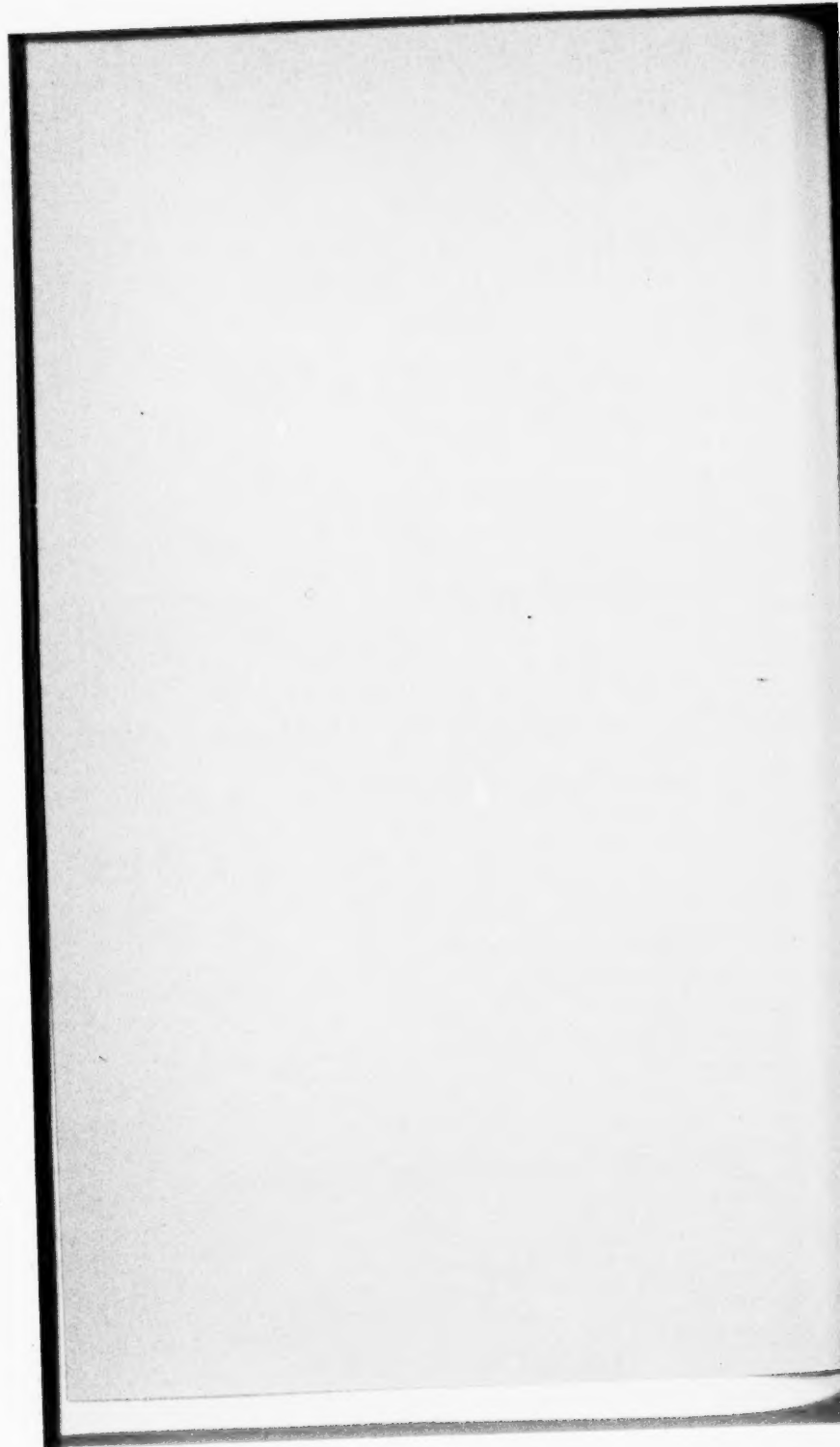
vs.

Atchinson, Topeka & Santa Fe Railway  
Company; Gulf, Colorado & Santa Fe  
Railway Company; St. Louis, Iron Moun-  
tain & Southern Railway Company; St.  
Louis & San Francisco Railroad Com-  
pany; The Missouri, Kansas & Texas  
Railway Company; Kansas City South-  
ern Railway Company; Ft. Smith &  
Western Railroad Company; The Chicago,  
Rock Island & Pacific Railway Company;  
American Express Company; Pacific Ex-  
press Company and the Wells Fargo Ex-  
press Company,

*Defendants*

14  
No. 19 Orig

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT





IN THE  
SUPREME COURT  
OF THE  
UNITED STATES

---

THE STATE OF OKLAHOMA,

*Plaintiff,*

vs.

Atchinson, Topeka & Santa Fe Railway  
Company; Gulf, Colorado & Santa Fe  
Railway Company; St. Louis, Iron Moun-  
tain & Southern Railway Company; St.  
Louis & San Francisco Railroad Com-  
pany; The Missouri, Kansas & Texas  
Railway Company; Kansas City South-  
ern Railway Company; Ft. Smith &  
Western Railroad Company; The Chicago,  
Rock Island & Pacific Railway Company;  
American Express Company; Pacific Ex-  
press Company and the Wells Fargo Ex-  
press Company,

*Defendants*

TO THE JUDGES OF THE SUPREME COURT  
OF THE UNITED STATES OF AMERICA.

Your oratrix, the State of Oklahoma, complainant,  
by Charles West, its Attorney General, hereby prays  
leave to file this its bill of complaint hereto attached,

and for process and order upon the defendants therein  
named to answer or demur the same as therein prayed.

CHARLES WEST,  
Attorney General of the State of Oklahoma.

E. G. SPILMAN,  
Asst. Atty. General, of Counsel.

IN THE  
SUPREME COURT  
OF THE  
UNITED STATES

THE STATE OF OKLAHOMA,

*Plaintiff.*

vs.

Atchinson, Topeka & Santa Fe Railway  
Company; Gulf, Colorado & Santa Fe  
Railway Company; St. Louis, Iron Moun-  
tain & Southern Railway Company; St.  
Louis & San Francisco Railroad Com-  
pany; The Missouri, Kansas & Texas  
Railway Company; Kansas City South-  
ern Railway Company; Ft. Smith &  
Western Railroad Company; The Chicago,  
Rock Island & Pacific Railway Company;  
American Express Company; Pacific Ex-  
press Company and the Wells Fargo Ex-  
press Company,

*Defendants*

14  
Orig.

CHARLES WEST,  
Attorney General of the State of Oklahoma

IN THE  
SUPREME COURT  
OF THE  
UNITED STATES

THE STATE OF NEW YORK

vs.

JOHN J. GREGG

Defendant

Appeal from the

Supreme Court of the

State of New York

in No. 10,000

Argued and heard

on the 10th day of

October, 1900

Present

Chief Justice

Justice

Justice

Justice

Justice

THOMAS M. CLARKE

Attorney General of the State of New York

for the State of New York

vs.

IN THE  
SUPREME COURT  
OF THE  
UNITED STATES

THE STATE OF OKLAHOMA,

*Plaintiff,*

vs.

Atchinson, Topeka & Santa Fe Railway  
Company; Gulf, Colorado & Santa Fe  
Railway Company; St. Louis, Iron Moun-  
tain & Southern Railway Company; St.  
Louis & San Francisco Railroad Com-  
pany; The Missouri, Kansas & Texas  
Railway Company; Kansas City South-  
ern Railway Company; Ft. Smith &  
Western Railroad Company; The Chicago,  
Rock Island & Pacific Railway Company;  
American Express Company; Pacific Ex-  
press Company and the Wells Fargo Ex-  
press Company,

*Defendants*

TO THE JUDGES OF THE SUPREME COURT OF  
THE UNITED STATES OF AMERICA:

Your oratrix, the State of Oklahoma, Complainant,  
by Charles West, its Attorney General, agent and so-  
licitor, duly elected, qualified and acting according to  
law, states that a controversy has arisen between said  
State and the defendants respecting the right of the  
defendants to import into said State certain intoxi-  
cating liquors hereinafter named, and as hereinafter

stated, to certain persons hereinafter named, holding a license from the Government of the United States to sell intoxicating liquor in said State, as more fully appears herein, and into certain portions of said State irrespective of said licenses; and the State of Oklahoma complains that each and all of said defendants are corporations and common carriers organized under the laws of one or more of the States or Territories of the United States, not the State of Oklahoma, the Territory of Oklahoma or the Indian Territory, and not domestic corporations in the State of Oklahoma, and are non-residents of the State of Oklahoma and not citizens thereof; that said defendants were at all the times named herein, and are now, incorporated and organized under the laws of the other States, and residents and citizens thereof, as follows:

The Atchison, Topeka & Santa Fe Railway Company, incorporated and organized under the laws of the State of Kansas, and a resident and citizen thereof; Gulf, Colorado & Santa Fe Railway Company, incorporated and organized under the laws of the State of Texas, and a resident and citizen thereof; St. Louis, Iron Mountain & Southern Railway Company, incorporated and organized under the laws of the States of Missouri and Arkansas, and a resident and citizen thereof; St. Louis & San Francisco Railroad Company,

incorporated and organized under the laws of the State of Missouri, and a resident and citizen thereof; The Missouri, Kansas & Texas Railway Company, incorporated and organized under the laws of the State of Kansas, and a resident and citizen thereof; Fort Smith and Western Railroad Company, incorporated and organized under the laws of the State of Arkansas, and a resident and citizen thereof; The Chicago, Rock Island & Pacific Railway Company, incorporated and organized under the laws of the State of Iowa, and a resident and citizen thereof; Pacific Express Company, incorporated and organized under the laws of the State of Nebraska, and a resident and citizen thereof; Wells Fargo Express Company, incorporated and organized under the laws of the State of New York, and a resident and citizen thereof; the American Express Company, which is a partnership composed of the following persons, to-wit: James C. Fargo, Lewis Cass Ledyard, W. H. Seward, Johnston Livingston, Edward B. Judson, F. F. Flagg, Charles G. Clark, and Charles M. Pratt, all of whom are residents and citizens of the State of New York, and not residents and citizens of this State; and composed of other persons whose names are unknown, but whomsoever they are, they are all residents and citizens of States other than the State of Oklahoma.

That previous to the 16th day of November, 1907, what is now the State of Oklahoma, was divided into what was formerly the Territory of Oklahoma and what was formerly the Indian Territory; that all of the land in the Indian Territory, was originally owned by various Indian tribes and nations, and that in each and every case an agreeemnt was made with said Indian tribes owning said land, by the United States, that said land should be divided and allotted in severalty among the members of said tribes, with certain special exceptions named in the treaties; and that in each and every case a contract, agreement, and solemn treaty was entered into and made between said Indian tribes and nations and said United States, to the effect that the United States agreed to maintain strict laws in all of said Territory, and particularly in the land thereby agreed to be allotted, against the introduction, sale, barter, or giving away of liquors and intoxicants of any kind or quality, and that this agreement on the part of the United States, and this contract was in purusance of its custom and its duty to protect the persons and property of the said Indian tribes and nations and the members thereof, from the degenerating influence of intoxicating liquors, under the authority vested in the Congress of the United States to govern the said Indian tribes; and that in



pursuance of the said treaties and contracts, and the custom and duty of the United States therein, the Congress of the United States by an Act approved June 16, 1906, provided for the admission into the Union of a State formed out of what was formerly the Indian Territory and what was formerly Oklahoma Territory, and that the same should be admitted on terms of equality with the other States, but expressly providing that the United States should be left in control of the Indians and the Indian tribes and their property, and expressly providing as one of the conditions precedent to the admission of said State into the Union, that the said proposed state should in its constitution provide that the manufacture, sale, barter, giving away, or otherwise furnishing, except as therein provided, of intoxicating liquors within those parts of the proposed State then known as the Indian Territory and the Osage Reservation, and within any other parts of the proposed State which existed as Indian Reservation on the 1st day of January, 1906, should be prohibited for twenty-one years from the date of the admission of the State into the Union, and that in said Act no reservation or exception was made whereby any one of the defendants might import into the said named portion of said State, or in any other manner, furnish any intoxicating liquors whatsoever, and the pow-

er to regulate interstate commerce in intoxicating liquor was thereby surrendered to the State of Oklahoma as to said portions of said State; and by the said Act it was not provided that intoxicating liquor should be furnished to any person in what was formerly the Indian Territory, including the Osage Reservation, and any other parts of the State which existed as Indian Reservations on the 1st day of January, 1906, in the manner and form that the same is now furnished and imported by said defendants as hereinafter more fully set forth, or in any other manner or form.

More particularly, the Government of the United States, by its treaty of 1820 with the Choctaws and the Choctaw Nation, entitled, "A treaty of friendship, limits, and accommodation, between the United States of America and the Choctaw Nation of Indians, begun and concluded at the Treaty Ground, in said Nation, near Doak's Stand, on the Natchez Road," (7 Stat. at Large, 210,) in Article 12 thereof, vested power in the agent of the United States Government situate with said nation to confiscate whiskey which should be introduced into said nation.

Again, the Treaty with the Choctaw Nation of 1830, entitled "A treaty of perpetual friendship,

cession and limits, entered into by John Eaton and John Coffee, for and in behalf of the Government of the United States, and the Mingo, Chiefs, Captains and Warriors of the Choctaw Nation, begun and held at Dancing Rabbit Creek, on the fifteenth of September, in the year eighteen hundred thirty," (7 Stat. 333,) in Article 10 thereof, provided that the United States was to be particularly obligated to assist in preventing the introduction of ardent spirits into the domain of the nation.

And again, the Treaty with the Choctaws and Chickasaws of 1866, entitled "Articles of Agreement and convention between the United States and the Choctaw and Chickasaw Nations of Indians, made and concluded in the City of Washington, the twenty-eighth day of April, in the year eighteen hundred and sixty-six" (14 Stat. 769,) in Article 10 thereof, reaffirmed the obligations of the United States growing out of all former treaties and stipulations.

Again, the Treaty with the Cherokees of 1866, entitled "Articles of agreement and convention at the City of Washington on the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, between the United States and the Cherokee Nation of Indians" (14 Stat. 799,) in Article 27 thereof, provided that no liquor should be introduced into

the nation except under the medical department of the United States.

That by the Constitution of the State of Oklahoma, it was provided that all contracts existing at the time of the admisison of the State into the Union, and all rights, including all agreements, contracts, treaties and rights, growing out of the same, made with any Indian, or Indian tribe, or for his or their benefit, should be and exist as though no change in the form of government had been made from the Indian Territory to the State of Oklahoma; and it was further provided, by ordinance irrevocable, that the terms and conditions of the Act approved June 16, 1906, was accepted, including the provision against the furnishing intoxicating liquors in what was formerly the Indian Territory by any person whatsoever, and in any way whatsoever; and thereby, the State of Oklahoma is obligated in the stead and place of the United States, so far as the power is lodged in it, to carry out the treaty and agreements made with the said Indian tribes against the introduction, sale, or in any manner the furnishing of intoxicating liquors in what was formerly the Indian Territory; but that defendants, in violation of the law, and the rights of said Indian tribes therein, and in injury to the rights of the State of Oklahoma and the inhabitants thereof, have

openly, notoriously, persistently and continuously violated all of said provisions against the introduction of intoxicating liquors into what was formerly the Indian Territory, since the 16th day of November, 1907, up to and at this time, by introducing, furnishing, carrying and conveying into the same, on divers and sundry occasions continuously, numerous and various kinds of beer, ale, wine, and intoxicating liquors.

That the open violation of the law therein, deeply injures and irreparably destroys the good citizenship and property of the State and its inhabitants, and said defendants threaten to continue the same unless restrained; that in continuing so to do, said defendants and each of them have committed acts which amount to the surrender and abandonment of their corporate rights to be engaged and doing business in interstate commerce between the States, and against these acts the plaintiff has no adequate remedy according to the course of the common law.

And further, the State of Oklahoma complains and says that various persons in said State have made payment of the special tax required of liquor dealers under the laws of the United States, a list of said persons together with their place of address and business, is as follow, to-wit:

### ARDMORE.

Ardmore Bttl. & Mfg. Co., Brewers Less, N. Caddo.

T. K. Baker & Co., RLD.

J. R. Dyer & T. J. Parnell, RLD, 103 E. Main.

R. L. Cotton & John Bonner, RLD, Oct., 112 N. Caddo.

Levi Higginbotham, RMLD, Oct., E. Main.

King Simons, RMLD, Oct., E. Main.

Chas. Key, RMLD, Oct., 112 N. Caddo.

Marie McNemee, RMLD, Oct., 310 1-2 E. Main.

### AFTON.

Leonard & Co., S. P. Bagles, RMLD, Oct., W. S. Main.

V. Landrum, WMLD, Nov. E. Main.

### APACHE.

Amphlett Bros., F. J. & T. G. RLD, Evans & Coblake.

### ALLUME.

Chas. Fisher, RLD, July.

### ATOKA.

H. S. Hutchinson, RLD, Sept., N. S. Court.

### ALTUS

L. W. Smith & D. R. M. Jones, RLD, Aug., L9-B38.

### ANADARKO.

Eagle Club Room.

J. W. Goebel, RMLD, Nov., C. Ave.

### BARTLESVILLE.

Almeda Billiard Co., RMLD, Almeda Hotel.

A. C. Cooper & F. J. Merkel, RLD, Hotel Basement.

D. H. Behnin, WMLD, 125 W. Second.

Nellie Barr, RMLD, E. S. Park.

Chas. Ball, RLD, Dewy & 2nd.

E. M. Reeves, RLD, N. S. 11th.

Thos. Brown, RMLD, 104 Dewey.

L. D. Conrad, RLD, Nov., Osborne.

Eagles Lodge No. 610, J. Wright, RMLD, July, 113

E. 3rd.

Elks Club, RMLD, Sept., Johnson Ave.

Eva Fain, RMLD, July, 102 W. 1st.

G. H. Gleason, RLD, Aug., Smelter Town.

Jno. Grubb & P. Pruitt, RLD, Aug., 1st St.

Tom T. Heln, RLD, July, 3rd and Dewey.

Pat Kennedy, RLD, Nov., End Car Line.

L. D. Montgomery, RLD, July.

W. A. Mitchell & H. E. Croft, RLD, Oct., 115 S.

S. 2nd.

H. L. Noland, RLD, Sept., Smelter Town.

Henry Nelson, RMLD, Nov., 119 E. 1st.

J. Pool, RLD, Aug.

J. F. Parker.

H. Ratcliff & M. R. Shea, RLD, Aug., 3rd.

Alex Schultz, RMLD, July, Car Line & 7th.

Ed Schrandt, RLD, July, 104 E. 2nd.

L. W. Strahan, RLD, Sept., E. 2nd.

T. Willoughby & Co.

F. M. White, RLD, Oct., W. 2nd.

#### BRISTOW.

Richard Assaid, RLD, W. S. Main.

E. Slyman & F. Mike, RLD, W. S. Main.

Ed Abraham, RLD, Oct.

#### BROKEN ARROW.

Gus Cline, RLD, Aug., E. S. Main.

E. M. Yates, RLD, Nov.

Geo. McKeeshan, RLD, Nov.

### BIG CABIN.

Langley & Richardson, RMLD.

Irven Johnson, RMLD, Oct.

### BISBY.

L. M. Forry, RLD, July.

R. H. Hughes, RLD, July.

### BEGGS.

C. J. O'Hornett Drug Co., RLD, July, L8-B32.

R. W. Lankford, RLD, Nov., Main.

### BRAGGS.

H. G. Oliver, RMLD, Sept.

J. Renore, RMLD, July, W. S. Rabinson.

### BOKOHOMA.

W. S. Ford, RMLD, July, S. W. 1-4 29-28-26.

### BLACKBURN.

E. D. Townsend, RLD, Oct., Marlow Bldg.

### BOYNTON.

E. M. Cowherd, RLD, Oct., Marlow Bldg.

### COALGATE

M. Brechen, RLD, Oct.

R. M. Carter & A. J. Drake, RLD, July L29-B36.

L. Cuchetti, RMLD, Aug.

Geo. Charon, RLD, Oct., E. N. 9th.

Edwards & Holmes, RLD, July.

Aug. Fleck, RLD, July.

J. H. Gray, RLD, Sept., Main.

G. S. Johnson, RLD, July, L11-B46.

C. L. Johnston, RLD, July, S. Main.



Frank Kowacik, RLD, Sept., 300 Yds. W. No. 2  
S. St.

Joseph Lewis, RLD, Oct., E. S. Main.

Anna Leone, RMLD, Nov.

A. McDonald, RMLD, Aug.

G. McGinnis, RLD, Sept.

John Ornel, RMLD, July, N. Main.

Sam Nathan, RLD, Sept.

~ R. J. O'Niell, RMLD, July.

Mrs. Maud Olson, RMLD, Sept., Blk. 1.

A. Pozzino, RLD, July, Old Co. Store.

Sallie Willis, RMLD, July.

Andy Alds, RLD, July.

T. H. Orr, RLD., Dec., E. S. Main.

### CHICKASHA.

W. L. Burgess, RLD, 317 Chickasha.

R. C. Bayless, RLD, 217 Chickasha.

H. C. Bondurant, RLD, N. S. Chickasha.

H. Barker & W. L. Edwards, RLD, 512 Penn.

S. B. Cook, RLD, Sept., Chickasha.

Jno. Cover & J. R. McRae, RLD, Aug., 222 Chick-  
asha.

John S. Grogg, RMLD, Oct., N. 3rd.

R. F. Holloway & R. F. Prince, RLD, July, 125  
K. Ave.

John Jos. Petty, RLD, Dec., 210 Chickasha.

W. A. Stinger, RLD, July, 116 S. 3rd.

C. J. Stephens & Co., RLD, July, 127 Chickasha.

S. E. Sawyer, WLD, Oct.

J. Tolent & M. Deputy, RLD, July, E. S. S. 2nd.

John Tolan, RLD, Nov., 402 Chick.

Chas. Vaughn, RLD, Nov., 317 Chick.

### CLAREMORE.

J. T. Ault & C. F. Fulbright, RLD, N. S. 3rd.

W. A. Byars & W. E. Shipley, RLD, N. S. Main.

H. M. Duncan, RLD, July.

H. M. Duncan, WMLD, Aug., 3rd & Wichita.

J. H. Smith, RLD, Aug., S. S. 3rd.  
Eagles Club, RLD, Nov., Cato & 4th.  
W. B. Baker & W. Marshall, RLD, July.

#### CHECOTAH.

Russell Drug Co., RLD, July.  
G. Lucas & G. Odum, RLD, Oct., W. S. Main St.  
Ira Marsh, RLD, July.  
J. M. Permenter, RLD, July.  
J. P. Faulkner, RLD, July.  
W. Taylor & B. F. Draper, RLD, July.

#### COETA.

H. N. Brine, RLD.  
W. L. James, RLD.  
J. E. Sapp, RLD, Sept.  
P. W. Williams, RLD, July.  
H. B. Howard, RLD, Oct.  
Bob Malone, RLD, Oct.

#### CHELSEA.

W. E. Ault, RLD.  
Chelsea Drug Co., H. H. Boyd, Jr. & Grant.  
Combs, RLD, July, S. S. 6th.  
J. H. Constable, RLD, July, 6th & Mac.  
J. R. Coker & B. Fowler, RLD, July, W. S. Olive.  
R. T. Morris, RLD, July, S. S. 6th.

#### COLLINSVILLE.

M. H. Gordon & A. H. Wallis, RLD, Aug., N. S.  
Main.  
G. A. Ellington & J. C. Guin, RLD, Nov., S. S.  
Brdy.  
A. S. & J. C. Isbells Drug Store, RLD, Nov.  
F. A. McCormick Drug Store, RLD, Aug.

#### CHANDLER.

C. M. Roberts, WMLD, Oct., Main.  
C. M. Roberts, RLD, Oct., Main.

### CAMPBELL.

O. W. Newton, RMLD, Sept.

### CLEARWATER.

Clearwater Drug Co., H. L. Riley, RMLD, Nov.,  
S. S. Main.

### COPAN.

G. DeLeon & J. H. Martin, RLD, Nov., N. S. Wel-  
don.

### CHANT.

C. B. Carlisle, RLD, July, Main St.

### CUSTER.

Eugene Snyder, RLD, July, Main.

### CATOOSA.

E. M. Ping, RMLD, July.

### DOW.

Henry Pechiono, RLD, July, Store.

### EUFAULA.

E. D. Bradley, RLD, L6-B32.

W. A. Bumgarner, RLD, 1 Mi. West.

J. W. Jones, RLD, July, Jackson & D.

H. W. Kilgore & Co., J. F. Sanders, RLD, July.

J. F. Sanders, RLD, July.

W. G. Mohort Drug Co., RLD, July.

Henry McNeil, RLD, July.

Price Bros., J. M. & D. L., RLD, July.

Wm. Redmond, RMLD, July, E. Front.

Alex Sellers, RLD, July, Sellers Bldg.

N. Pennington, RLD, July.

W. Redmond, RLD, Oct.

A. L. England, RLD, Oct.

### ENID.

C. Amusement, RLD, Randolph.  
Bank Exchange, W. M. Cook, RLD, E. Brady.  
Corner Cafe, O. Ostendorfer, RLD, Sept., Indep.  
Grand Ave. Club.  
B. McCarthy & H. C. Courteney, RLD, Sept.,  
Grand Ave.  
Sillespie Drug Co., RLD, Sept.  
Owl Drug Co.  
W. L. Henrion & M. A. Vesper, RLD, July, N. S.  
Sq.  
Chas. Segerman, RLD, Aug., 103 S. Market.

### ELK CITY.

C. Cushman & Co., RLD, July, W. S. Main.  
S. Duke & W. C. Watson.  
Elk Club.  
J. Gavith & H. G. Mathers & Co., RLD, Sept.  
H. G. Mathers & Co., RLD, Oct.  
J. H. Story, RLD, July.  
A. Twidle (J. McWright & Co.) RLD, July.

### ELLWORTH

Ellworth Drug Co.  
W. G. Sheriff & Geo. Seitz, RLD, July, Douglas  
Ave.

### FT. GIBSON.

Wm. Hill, RLD, Aug.  
Opera House Drug Store, RLD, Nov.  
J. W. Wagoner, RLD, July.  
Dan Bailey, RLD, July.

### FAIRLAND.

Wm. Kelley, RMLD, July.

### GUTHRIE.

Okla. Distg. Co., C. H. Shemill, WMLD, Aug.  
L. C. Scott, RLD, Oct., Vine & Okla.

#### GLENPOOL.

I. N. Taylor, RLD, Aug.  
C. W. Gray, RLD, July.

#### GUYMON.

Harrison Bros., A. & P., RLD, Sept.  
G. W. Tucker & A. C. Chapman, RLD, Sept.

#### GEARY.

L. A. Holmes, RMLD, July.  
J. D. Bender & Son, RLD, July.

#### GARVIN.

W. C. Impson, RLD, Sept., Main.

#### GATESVILLE.

Alfred Gates, RLD, Dec., Wagoner Co.

#### HUGHES.

Joe Adams, RLD.  
W. R. Garner, RLD, July.  
Pete Jones, RLD, July.

#### HAILEYVILLE.

W. T. Bibb, RMLD.  
T. L. Watters, RLD, July.

#### HENRYETTA.

J. Bryant & J. Gordon, RLD, 17 Main.  
R. F. Greenwood & P. De Molens, RLD, Oct.,  
Main.  
W. C. Sanderson, RLD, Nov., 5th & Main.

### HOLDENVILLE.

H. C. Hyde, RLD, July, 6th St.  
W. J. Tobin, RLD, Oct.

### HUGO.

Ed Houghton, RLD, July, Com'l Hotel.  
W. N. Campbell, RLD, July.  
W. A. Wright & Co., RLD, July.

### HUTTONVILLE.

E. Hutton, RLD, July.

### HATTENVILLE.

Dan Isley, RMLD, July, 2 Mi. from Miami.  
J. A. Mensch & F. M. Phillips, RLD, Sept.

### HASKELL.

Geo. H. Kaylor, RMLD, July, Moor Bldg.  
Clough Lipscomb, RLD, July, S. S. Main.

### IRBY.

Tom Haggard, RMLD, Oct.

### INOLO.

C. G. Olmstead, RMLD, July, Crutchfield Bldg.

### JONES CITY.

W. W. Barker & J. Karnes, RLD, Near Depot.  
E. Merritt, RLD, Aug., W. S. Main.

### JENKS.

W. M. Fox & Co., M. Hollis, RLD, July.  
Upton, Ryan & Hollis, RLD, July, Parker Bldg.

### KIEFER.

E. Apple & B. N. Letts, RLD.  
W. E. Cole, RLD, Aug.  
Robert Frazier, RLD, July.  
S. Feedback, RLD, July, L2-B6.  
Peter De Molens, RLD, July, N. S. Main.  
J. P. Shettlesworth, RLD, July.  
J. Schneider & C. Turner, RLD, Oct., N. S. Main.  
W. E. White, RMLD, July.  
O. T. Wright, RLD, Sept.

### KREBS.

J. P. Crano, RMLD, July, 2nd St.  
Phil Cooley, RLD, Oct., West & Lincoln.  
Joe Mauze, RLD, July, 3rd & Jackson.  
Fagostina Postory, RLD, July, 3rd Ward.  
Frank Polecaster, RLD, Oct., 4th Ward.  
Antonio Rich, RLD, July, Store.  
John Silva, RLD, July, Pool Room.  
Krebs Co-operative Co., Nov., Main.

### LEHIGH.

J. W. Boering & Co., C. P. Taylor, RLD.  
Pete Bagaini, RMLD, E. Scammon.  
Joe Evrietto, RMLD, July.  
R. E. Farmer & A. H. Lee, RLD, July, Olive.  
J. O. Trimmell, RLD, Aug.  
Peter Janzen, RMLD, July.  
Jno. Procarione, RMLD, Oct., L5-B-69.  
Joe Banch, RLD, Sept., E. S. Willow.  
E. J. Johnston, RLD, July.  
R. & J. McClintock, RLD, Nov., Olive.

### LAWTON.

Eagles Lodge No. 504, J. W. Wright, RLD, July,  
15 C.

## LEXINGTON.

Elks Club RLD, July, D.  
Paul's Club, P. Baldwin & L. L. Ille, RLD, Oct.  
Star Pool Hall, RLD, July, Main.

## LENNA.

S. W. Treat, RLD, Nov.

## LINCOLNVILLE.

A. H. Branderson, RLD, Nov., Pool Hall.

## LONGDALE.

E. F. Smith, RLD, Aug., L11-B9.

## MUSKOGEE.

A. W. Banks, WMLD, 18 Court.  
H. H. Brown & William Caraway, RLD, 320 W.  
Okmulgee.

A. W. Banks, RLD, 219 W. Main.  
E. H. Bronson, RLD, Derby Annex.  
W. S. Biggs, RLD, 202 N. Chero.  
E. H. Bronson & Co., A. Wright, WLD, 221 N.  
3rd.

H. C. Cobb, RLD, July, 116 N. Main.  
Cardinal Drug Co., RLD, July, Okmulgee & Main.  
Clements John, RLD, July, 1411 S. 2nd.  
J. C. Collins, RLD, Sept., 308 N. 2nd.  
E. W. Chambliss, RLD, Aug., Cottage Hotel.  
R. Drummond, RMLD, Aug., 321 Com'l.  
Elks Club, RMLD, Aug.  
E. A. Estes, RLD, Sept., 112 N. Main.  
H. Hargrove, RLD, July, 2nd & Court.  
J. A. Hardwick, RLD, Sept., N. Cherokee.  
W. S. Hughes & M. C. Simmonds, RLD, July, 225  
S. 2nd.

L. A. Kelly, RLD, Aug., N. 2nd.  
R. E. Keith, RLD, Nov., 110 S. 2nd.



S. H. Pate, RLD, Oct. 221 Okmulgee.  
 Frank Reed, RLD, July, 214 S. 2nd.  
 C. F. Snelson, F. McMillan & Co., J. D. Fields,  
 RLD, July, 120 S. Main.  
 M. Smith, RMLD, Oct., 20 Iola.  
 J. G. Spurlock, RLD, Oct.  
 Wm. Trimble, RMLD, Aug., 209 N. Chero.  
 J. Thompson, RLD, July 309 S. 2nd.  
 D. Thompson & R. W. Rushing, RLD, July, 206  
 Elgin.  
 A. V. Taylor, RLD, Nov., 2 Lo N. Chero.  
 Horace Veale, RLD, Sept., 110 N. 2nd.  
 F. M. Woods & Co., RLD, July, Chero. & Brdy.  
 A. Wright, RLD, Oct., 113 N. Main.  
 North End Pharmacy.  
 M. C. Simmons & J. O. Mitchell, RLD, July, 603  
 N. 3rd.

#### McALESTER.

M. L. Billings, RMLD, Main.  
 W. E. Burkett, RLD, W. S. Main.  
 H. S. Cohn, WMLD, July.  
 W. A. Cole, RLD, Oct., Grand & Main.  
 H. S. Cohn, RLD, July.  
 W. W. Crump, RMLD, Oct., Main.  
 H. A. Harrison, RMLD, July, 18 E. Choctaw.  
 H. A. Morrison & Co., O. Fromiers, RLD, Sept.,  
 N. Main.  
 J. A. Hose, RLD, July.  
 J. W. Low, RLD, Sept., 120 Main.  
 F. J. McFarland, RLD, Oct., Hotel Bldg.  
 Pool Club, G. Ward & A. M. McIntyre, RLD, July,  
 Dobbs Bldg.  
 Steve Perretto, RLD, Sept., S. Mine No. 1.  
 C. E. Sillix, RLD, July, 20 E. Grand.  
 B. F. Sherburn & Co., H. S. Cohn, RMLD.

#### MIAMI.

F. P. Austin, RLD, Sept., Main.

F. Bell & Schwenk, RLD, L17-B8.

C. E. Balch, RLD, R. F. D. No. 2.

R. G. Cunningham & E. E. Shriver, RLD, July,

Main.

T. B. Carpenter & J. L. Drake, RMLD, Aug.

J. E. Drake & Jno. McClary, RMLD, Oct.

J. H. McClary & Drake Milt, RLD, Nov., E. S. St.

C. E. Schwenk & F. Bell, RLD, Aug., L 17-B8.

L. Lucky & M. Kennedy, RLD, Aug.

J. H. McClary, RMLD, Sept.

#### MOUNDS.

M. Gleen & F. Willis, RMLD, Sept., E. S. Com'l.

G. D. Kendall, L. R. Sayre Drug Co., RLD, July,  
Com'l Ave.

John H. Peterson, RLD, July, Com'l Ave.

W. L. Dougherty, RLD, July, Com'l Ave.

#### MORRIS.

Tom Bricken & T. H. Hamill, RLD, July, Ozark  
& Hughes.

T. J. Montgomery, RLD, July, W. S. Hughes.

E. E. Moss, RLD, Aug., Hughes Ave.

J. M. Kenna & A. Huff, RLD, Sept., W. S. Hughes.

#### MAUD.

Maud Pool Hall, J. O. Broadus, RLD, Oct., Main.

#### MADILL.

Trammel Bros. Co., J. H. & J. D., RLD, July, S.  
S. Sq.

#### MOUND CITY.

J. J. Sheets & L. A. Doan, RLD, Aug., L15-B15.

#### MINERAL.

Mike Savant, RLD, Aug., Lot 28.

### McLEOD.

R. C. Tilton & Co., J. Nonhaske, RLD, Nov.

### NOWATA.

J. W. Anderson, RMLD.

J. P. Ledington & G. E. Shoemaker, RLD, Aug.,  
W. S. Maple.

### NEWKIRK.

J. S. Thomas, RLD, July, L 31 B39.

### OKLAHOMA CITY.

A. P. Ashbrook, RLD, 4 Cal.

A. & S. Buffet, Allsman & Simmons, RLD, 21 S.  
Harvey.

Boyce J. & Ellish H., RLD, 224 W. Reno.

Gus Bohn, RLD, Robinson.

J. M. Burgess, RLD, Broadway.

C. Butler & — Pesfield, RLD, 19 1-2 W. Grand.

J. W. Bailey & J. H. Rainey, RLD, 304 W. Grand.

J. R. Blair, RLD, 417, W. Main.

C. Brown, RLD, 6 1-2 N. Broadway.

Brunswick Catering Co., W. C. Leech, RLD, 204  
Broadway.

D. M. Blunk, RLD, 127 Grand.

Alta Buffet, RLD, Brdy. & Cal.

H. S. Barker, RLD, W. Grand.

Brdy. Confec., R. S. Gowen B. Mgr., RLD, S. Brdy.

Bachelors Club, C. Haney, RLD, W. Reno.

J. Clemmons, RLD, 302 W. Grand.

R. E. Chamberry, RLD, Reno & Robinson.

G. H. Clark & G. M. Clark, RLD, 1st St.

U. Corbin, RLD, Sept., 114 S. Harvey.

The Corner, RLD, Sept., W. Cal.

M. A. Cahn, RLD, Sept., S. Broadway.

Carter & Co., RLD, Sept., S. Broadway.

H. Davis, RLD, Aug., 219 Choctaw.

Chas. Desteal, WLD, July, 31 W. 1st.  
 E. Dowler, RLD, Sept.  
 Eagles Lodge, Peter Brewer, RLD, July, 203 1-2  
 N. Main.  
 Oscar Eichelberger, RLD, July, 319 S. Rob.  
 East Side Club, J. Thompson & W. Mitchell, RLD,  
 July, 125 Main.  
 El Reno Pool Hall, W. Cook & D. Chandler, RLD,  
 July, 222 Reno.  
 Eng. Eldridge, RLD, Sept., W. 1st.  
 F. James Fisk, RLD, July, 322 N. Broadway.  
 Frank Flinigan, RLD, July, 19 S. Main.  
 A. L. Franklin, RLD, July 110 Brdy.  
 W. Frazier & E. Hailey, RLD, Aug., 211 W. 1st.  
 S. Carruthers & E. H. Taylor, RLD, July, Main  
 St.  
 Ed Cone & Co., B. M. Hodges, RLD, July, 129 W.  
 Grand.  
 Ed Conley, RLD, July, 116 W. 1st.  
 B. Coats, RLD, July, 26 1-2 W. Main.  
 T. F. Cook, RLD, July, 220 Cal.  
 J. Foss, RLD, Aug., 218 Robinson.  
 C. Grapes, RLD, Aug., 22 S. Brdy.  
 Chas. Grapes, RLD, Aug., 417 W. Main.  
 Grand Ave. Rooms, M. Brannon, RLD, Aug., 312  
 Grand.  
 Jno. Green, RLD, Sept., W. Cal.  
 The Gem, J. Ross, RLD, Sept., W. Grand.  
 C. L. Green & Co., J. C. Smith, RLD, Oct., 406  
 W. Grand.  
 Peter Hamill, RLD, July, 16 W. Grand.  
 F. Holland, RLD, July, 111 Brdy.  
 M. Hicks, RLD, July, 110 S. Brdy.  
 Joe Kersheek, RLD, July, 222-226 Reno.  
 J. A. Harris, RLD, July, 204 1-2 Reno.  
 E. Henry, RLD, Aug., 312 1-2 W. Grand.  
 W. Heineman, RLD, Aug., 112 W. 1st.  
 Moss Brewing Co., Brew Less, July.  
 W. F. McIver, RLD, Aug., Cal.  
 J. Murray, RLD, Aug., Brdy.

Ned Milton, RLD, Aug., W. 1st.  
 Ned Milton, WLD, Aug., W. 1st.  
 J. M. McGraw, RLD, July, 31 W. 1st.  
 Jas. Harriman, RLD, Aug., 135 Grand.  
 The Midway, A. Marshall, RLD, Aug., 1205 Robinson.  
 Geo. H. Moore, RLD, Aug., Fair Ground.  
 H. C. Maddox & Co., Roy Shaater, RLD, Aug.,  
 208 W. Reno.  
 Pearl McKane, RMLD, Aug., 17 1-2 E. Reno.  
 Marhoeffer & Co., RLD, Sept., W. Cal.  
 H. A. Maisne & Co., RLD, Sept., W. 1st.  
 Met Supply Co., A. Chanepa, RLD, Nov., Harvey  
 & Rob.  
 Okla. Dist. Co., C. H. Sherrill, WMLD, Aug., 5th  
 St.  
 Oklahoma Liquor Co., WMLD, Okla. City &  
 Gainesville, Texas.  
 Oklahoma Liquor Co., RLD, Sept., S. Harvey.  
 The Office Club, RLD, Sept., S. Brdy.  
 The Okla. Club, L. Mitchell & W. Thrail, RLD,  
 Oct., W. Grand.  
 Okla. Trading Co., G. Julian & J. Stafford, RLD,  
 Nov., 1st St. & Brdy.  
 Westfall Drug Co., W. Paul, RLD, Nov., 200 W.  
 Main.  
 J. R. Parks & Co., J. Faggart, RLD, July, 215.  
 William Parman, RLD, July, S. Cal.  
 Jake Poozman, RLD, Sept., W. 51st St.  
 A. L. Price, RLD, Aug., 926 W. Main.  
 J. Prince, RLD, Aug., 218 Reno.  
 Clarence Roberts, RLD, July, 120 1-2 S. Brdy.  
 R. & D. Collection Agency, C. W. Robertson, RLD,  
 Aug., 127 Grand.  
 The Raleigh, C. Brown, RLD, Betw. Santa Fe &  
 Vine.  
 The Rathskeller, RLD, Sept., N. Brdy.  
 H. D. Rutherford, RLD, Oct.  
 G. W. Rodden & Co., M. Davis, RLD, Sept., W.  
 Reno.

J. L. Rose, RLD, Aug., 29 W. Noble.  
J. L. Rose & Co., RLD, Sept., 124 W. Cal.  
Red Eagle Club, J. E. Clemmons, RLD, Sept., E.

4th.

Southern Club, D. C. Stout, RLD, July, 20 1-2  
Grand.

Wm. Scherer, RLD, July, 1 Compress.  
Wm. Schub, RLD, July, 316 W. 1st.  
Geo. Simmons, RLD, July, 24 1-2 Grand.  
P. Sinopola, RLD, July, Delmar Park.  
B. Smith & Co., RLD, Aug., 408 Main.  
W. Sherer, WMLD, 607 Pott.  
J. W. Shigley, RLD, Aug., 308 Brdy.  
J. A. Smith, RLD, Aug., 221 S. Rob.  
E. Schriener, RLD, Sept., Near Viaduct.  
Stuckey & Co., F. E. Syfert, RLD, Sept., 119 N.

Rob.

R. M. Shelton, RLD, Aug., 17 S. Rob.  
The Smoker, RLD, Sept., W. Grand.  
W. Shelton & J. Eaton, RLD, Aug., 215 Harvey.  
Julius Stumpff, RLD, July.  
Julius Stumpff, WLD, July.  
R. Shidler & W. R. Fox, RLD, Sept., 312 1-2 W.

Grand.

Sunset Club, J. Lawler, & J. Rodman, RLD, Oct.,  
W. Grand.

Santa Fe Club, RLD, Sept., W. Cal.  
R. Slomp, RLD, Sept., 326 W. 1st.  
J. L. Harryman, RLD, Sept., 112 1-2 W. 1st.  
J. W. Murphery Co., RLD, July, 303 W. Reno.  
Hickory Club, J. F. Fenston, RLD, Oct., W.

Grand.

The Ideal, Ladd & Ide, RLD, Aug., Reno St.  
E. Johnson, RLD, July, 1008 S. Rob.  
A. S. Jones, RLD, July, 108 1-2 W. Grand.  
J. H. Johnson, RLD, July, 208 W. Cal.  
E. H. Johnson & H. White, RLD, Aug., 218 1-2

Brdy.

F. V. Jones, RLD, Aug., 116 1-2 Brdy.  
Johnson & Co., RLD, Aug., W. Grand.

J. Johnson, RLD, Sept., S. Brdy.  
 Will Jones, RLD, Aug., 28 W. 1st.  
 E. W. Kemp & Ed Ryan, RLD, July, 2 W. Cal.  
 Robert Kerr, RLD, July, 12 S. Rob.  
 K. & W. Club, E. Kemp & W. Wright, RLD, Sept.,  
 Brdy.  
 K. C. Agency, A. S. Jones, WLD, July, Grand Ave.  
 P. G. Kessel, RLD, July, 23 N. Wash.  
 Katy Pool Hall, RLD, Aug., Reno & Broady.  
 Jno. W. Lee, RLD, July.  
 J. Lane & Co., O. Hathaway, RLD, July, 329 W.  
 Grand.  
 Little Texas, C. A. Metschen & D. W. Blunk, RLD,  
 Aug., 7 S. Harvey.  
 W. N. Liner, RLD, Sept., 217 W. Reno.  
 W. A. Ligon, RLD, Oct., S. Brdy.  
 The Menten Lagerine, RMLD, Nov., Rob. & Brdy.  
 H. Metzger, RLD, July, 4 Cal.  
 B. B. Moss Brewing Co., W. S. Shearer, Sec., J.  
 Wild, Treas., RMLD, July, Compress St.  
 J. McCarthy, RMLD, July, 120 Cal. to 117 S. Rob.  
 A. R. Meyers, RMLD, July, 807 S. Rob.  
 Frank Sibenaler, RLD, July, Wilson & Ill.  
 Wm. Trail & W. White, RLD, July, 15 Grand.  
 C. J. Tull, RLD, July, 208 W. Cal.  
 W. A. Trammel & Co., RLD, July, 112 Cal.  
 V. Taggart & H. Boucher, RLD, Sept., 319 S.  
 2nd.  
 The Tavern Stand, G. D. Foose, RLD, Oct., W.  
 Main.  
 Turk & Chanousky, N. Edelstein, agent, WLD,  
 Oct., 231 W. Pott.  
 Vawell Bros., A. J. & J. J., RLD, July, 200 W.  
 Reno.  
 R. F. Williams, RLD, July, 12 W. 1st.  
 F. Weitelman, RLD, July, 226 W. Reno.  
 L. West, RLD, Aug., 16 Grand.  
 A. Wagoner & B. McCracken, RLD, Aug., 302 W.  
 Grand.  
 White Seal Bottling Works, Trelford & McCabe,  
 WLD, Aug., 109 E. Main.

C. W. Woodbury, RLD, Aug., 105 1-2 W. Main.  
F. Weitelman, RLD, Oct., Fair Ground.  
P. Welsh, RLD, Oct., W. Cal.  
F. A. Young, RLD, Aug., 118 W. 1st.  
J. A. Vermillion & Co., RLD, Aug., Reno & Brdy.

#### OKMULGEE.

Elks Drug Co., RLD, July, 6th & Martin.  
C. M. Roberts, WMLD, July, 6th & Grand.  
C. M. Roberts, RLD, July.  
A. D. Clifton, WMLD, Oct., S. S. 6th.  
M. Buck, RLD.  
J. F. Santee, RLD, Nov., 6th.

#### OKEMAH.

W. H. Braggs, RMLD, N. S. Brdy.  
Jeff Townsend, RLD, Aug.

#### OCHELATTA.

A. A. Leicht, RMLD, July, W. S. Ochelatta.

#### OWASSON.

Orine Juby, RLD, July.

#### OKEENE.

B. C. Sahm, RLD, July, 79 Main.

#### PAWHUSKA.

McDonald Bros., L. J. & B. P., RLD, July, Com-  
press St.

Percy J. Monk, RL, July, Main.

E. E. Patterson, RLD, July, L2 B 83.

#### PONCA CITY.

H. B. Manns & Co., M. J. Johnson, RLD, Nov.  
Owen A. Ponton, RLD, July, 112 W. Grand.



### PRAGUE.

Levi A. Watts, RLD, July, W. S. Broadway.

### PERRY.

Fred Beers, RLD, 643 D.

### PORTER.

Central Drug Co., R. L. Rye, RLD, July.

K. Saab, RMLD, Sept.

A. L. Rattenee, RMLD, Oct., W. S. Main.

### PURCELL.

H. & C. Buffett, RLD, July, W. 2nd.

J. H. Moore, RLD, Aug.

### PHILLIPS.

H. J. Hughes, RLD, Sept., W. S. R. R.

### PAWNEE.

P. C. Jay & C. D. Jay, RLD, July, E. 1-2 L4 B 21.

### PORUM.

M. C. Jordan, RLD, Sept., Wilson Blk.

D. Speer & Co., B. J. Ball, RMLD, July.

O. H. Shoemaker, RLD, July.

### RAMONA.

Wm. R. Baso, RLD, Main.

C. F. Greenwood, RLD, Aug., Main.

### ROMULUS.

J. Regan & Co., G. Forbes, RLD, Oct.

### ROFF.

J. E. Smith, RLD, C. & T. Bldg.

## SAPULPA.

- R. W. Crigler, RLD, July, N. S. Dewy.  
Wm. Clending, RLD, Sept.  
Frank Clark, RLD, Sept., 23 N. Main.  
Elks Lodge, RLD, Aug., Hobson.  
Frisco Drug Co., S. & D. V. Richey, RLD, July,  
19 S. Main.  
S. Feeback, RLD, Aug., E. S. Main.  
John Gorman, RLD, Oct., Water & Dewey.  
S. C. Harper & Walter Heddens, RLD, July, N.  
E. Dewey.  
J. M. Hickey, RLD, July, Main & Hobson.  
Henry Knight, RLD, Sept., 19 N. Main.  
W. E. McDaniel, RLD, Aug., 313 E. Dewey.  
A. Moulder, RLD, Sept.  
C. J. O'Hornett, RLD, Oct., N. Dewey.  
J. Z. Steck, RLD, Oct., 15 N. Main.  
L. H. Smith, RLD, Nov., 10 N. Main.  
Frederick W. Turner, RLD, July, 4 N. Main.  
C. C. Warren, RLD, July, 18 Dewey.  
Chas. Whitaker, RLD, July, Main & Hobart.  
S. A. Oung, RLD, Aug., Hobson St.  
L. Ammerman & Co., RLD, Nov., Buffalo Hotel.  
J. M. Hickey & Co., F. E. Buxton, RLD, Nov., S.  
S. Hobson.

## SHAWNEE.

- J. R. Alexander, RLD, 114 N. Beard.  
B. Betts, RLD.  
C. Binder, 506 E. Main.  
Eli Brown & Co., RLD, 120 S. Brdy.  
F. J. Boswell, RLD, 6 W. Main.  
T. E. Barker & W. C. Allen, RLD, E. Main.  
E. Cowden, RLD, 202 Main.  
The Cottage, E. O'Brien, RLD, Near R. R. Depot.  
D. Cobb, RLD, July.  
M. A. Chan.  
A. L. Childers, RLD, July, 116 N. Beard.  
S. S. Crawford, RLD, Aug.  
J. A. Champion, RLD, July, 202 1-2 W. Main.  
T. C. Crowder, RLD, July, 130 N. Union.

R. Ezer, RMLD, Aug., S. Union.  
 J. Farr, RMLD, Aug., K. C. Yd.  
 B. Grant, RMLD, Aug., S. Union.  
 W. B. Grant, WLD, Sept., 204 E. Main.  
 C. R. Harriman, WLD, July, 102 E. Main.  
 L. B. Howell & T. L. Robe, WMLD, July, 132  
 Union.  
 E. Hagner, RLD, July, 112 N. Brdy.  
 A. H. Hawkins, RLD, Sept.  
 T. C. Hargrove, RLD, Oct., 209 1-2 E. Main.  
 S. Horany, RMLD, Aug., 111 E. Main.  
 Wm. Horany, RMLD, Sept., 412 E. Main.  
 B. Johnson, RLD, July, 8 Main.  
 Joe Logston, RLD, Sept., 126 Union.  
 S. A. Leselle, RLD, July.  
 M. S. Marvin, RLD, July.  
 C. H. Marmaduke & Son, RLD, July, E. Main.  
 W. A. Mann, RLD, July.  
 Joe Murry Co., RLD, Sept., 112 W. Main.  
 P. E. Noble, RLD, July, 117 1-2 S| Brdy.  
 R. Owens, RLD, Sept., E. Main.  
 J. R. Owens, RLD, Sept.  
 S. H. Polson, RLD, July, 120 S. Main.  
 M. Phillips, RLD, July, 121 S. Brdy.  
 J. Sullivan, RLD, July, 11 Main.  
 Bucett Star, RLD, Sept., Union.  
 Thomas Edward Sims, RLD, Sept., 126 S. Main.  
 W. Underwood, RLD, July, 213 E. Main.  
 Union Club, W. B. Grant, RLD, July, 125 E. Main.  
 A. White, RLD, July, E. S. Brdy.  
 Wm. Westerfield, RLD, Sept., 111 W. Main.  
 W. Wilson, RLD, Sept., Main.  
 T. C. Beavers, RLD, Nov.

#### SAYRE.

Paul Lehman, RLD, L14 B 34.  
 J. S. Williams & J. C. Snyder, RLD, Sept.

#### STIDHAM.

Cloyd & Remberton, RLD, July.

D. F. Basham, RLD.  
T. G. Lackey, RLD, Sept.  
M. J. Looper & T. F. Pemberton, RLD, Oct.  
B. L. Sinor, RLD, Oct.  
Jas. Cole, RLD, July, Pittman Bldg.

#### SAVANNAH.

Roy F. Bridgewater, RLD, McBrown Bldg.

#### SALLISAW.

Henry Mays, RMLD, Nov., L.  
W. S. Oliver, RMLD, Sept.  
H. V. Bedding, RMLD, July.  
C. F. Ivey, RLD, Sept.

#### STROUD.

Wm. Stolenberg, RLD, Sept.

#### ST. FRANCIS.

J. H. Egan, RLD, July.

#### SULPHUR.

T. W. Frame & L. C. Parker, RLD, July, Davis Ave.

#### TULSA.

F. B. Austin & Co., J. R. Burnham, RLD, 113 N. Beston.

C. O. Baker Drug Co., RLD, 206 S. Main.

Chas. H. Bryan, RMLD, 126 Main.

Ball, R. C. & O'Brien & Co., RLD, W. S. Main.

P. E. Coyne, RLD, July, 32 W. Main.

E. M. DeMoss, WLD, Nov., 309 Boulder.

Paul K. Gage, RLD, Aug., 12 W. 1st.

W. B. Green, RLD, Aug., 26 U. Main.

Getman Drug Co., R. & J. H., RLD, Aug., 119 S. Main.

- E. W. Hunter & A. R. Juby, RLD, Aug., E. 3rd.  
 Jno. B. Horton, RLD, July, 11 N. Main.  
 John T. Johns, RMLD, July, 112 S. Main.  
 N. O. Jones & F. Sieber, W. D., July, 401 1st St.  
 F. C. Leahy, RLD, Aug., 1y N. Main.  
 Edith Long, RLD, Oct., 22 N. Boston.  
 L. S. Marshall, RLD, July, 105 E. 1st.  
 B. H. McLaughlin & E. M. DeMoss, RMLD, July,  
 216 S. Main.  
 W. P. Miles, RLD, Aug., W. S. Main.  
 B. H. McLaughlin, RLD, Sept., Boulder.  
 Lowe Ownes, RMLD, July, L3-B80.  
 Chas. H. Overton, RLD, July, E. 1st.  
 Quaker Drug Co., Dr. T. A. Penny, Mgr., RLD,  
 July, 218 S. Main.  
 J. W. Paschal, RLD, July, W. S. Main.  
 J. B. Quigley, WMLD, July, 220 N. Boston.  
 Vearnt Russell, RMLD, Oct., 1st & Lansing.  
 J. E. Sanger Drug Co., RLD, July, 110 E. 1st.  
 Simmons, C. C., RLD, July, 120 S. Main.  
 J. L. Sells Drug Co., RLD, July, 110 Main.  
 F. E. Stokes & Co., RLD, July, 20 E. 1st.  
 F. E. Stokes, RMLD, July, Brady Hotel.  
 Walter Steen, RMLD, July, N. S. Frisco R. R.  
 M. A. W. Sturgis & Co., J. Morgan, RLD, Oct.,  
 1083 Boston.  
 T. U. Tatman, RLD, July, Alcorn Hotel.  
 J. W. Wade, RLD, July, 34-36 W. Main.  
 Will Whisman, RLD, Dec., 23 W. Main.  
 C. B. Whiteis, RLD, Aug., 116 N. Main.  
 W. Calligan & J. E. Guist, RLD, Nov., 104 S. Bos-  
 ton.  
 W. B. Green & S. A. Young, RLD, Oct., 1st & Bos-  
 ton.  
 W. E. Ham & Co., J. Stout, RLD, Nov., 103 1-2  
 S. Boston.  
 E. W. Hunter & J. E. Baker, RLD, Nov., E. 10th.  
 J. T. Johns, RLD, Nov., 9 E. 2nd.  
 A. E. Keith, RLD, Nov., 118 W. 1st.

Laflora & Co., K. W. Chambers, RLD, Nov., 17  
N. Boston.

J. L. Palmer, RLD, Nov., 18 S. Main.

#### TAFT.

J. E. Crane.

L. E. Moses Drug Co., RLD, July.

#### TISHOMINGO.

W. Cackley & W. Mickle, RLD, July, N. S. Main.

#### TUPELO.

T. Churchman, RLD, Sept., McCraig Bldg.

Jno. W. Ellington, RLD, Sept., Main.

#### TEMPLE.

Hodge & S. Heinim, RLD, July, W. Com'l.

#### TAHLEQUAH.

J. A. Moody & R. H. Luster, RLD, July.

#### VINITA.

W. J. Creekmore, WLD, Oct., McClellan Bldg.

T. Isbell & D. M. Prichett, RLD, July, 1st Main.

W. O. Lyons, RLD, July, E. S. S. Wilson.

M. C. Maddox & C. H. Webb, RLD, July, W. S.  
Main.

E. Shanahan & A. M. Mitchell, RLD, July, Wilson  
& Ill.

W. Otis Tittle, RLD, July, Vance.

G. Turner & J. C. Payne, RLD, Sept.

J. Thos. Wimer, RLD, July.

Rufus A. Cordy, RLD, Nov., McClellan Bldg.

#### WILBURTON.

Louis Antonelli, RMLD.

Estes & Estes, RLD, July.  
Kate Jones, RLD, July.  
R. Prantil, RMLD, July.  
Wm. Prantil, RMLD, July.  
W. E. Patterson, RLD, July.  
N. Tarter, RMLD, July.

#### WAGONER.

Sid Littrell, RLD, July, E. S. Main.  
H. W. Smith Drug Co., RLD, July, Main.  
M. J. Wade, RLD, Aug., W. S. Main.  
H. W. Santee, RLD, July.  
F. F. Jones, RLD, July.

#### WELCH.

Watson Drug Co., J. H. & J. W., RLD, July, K.  
& D. Bldg.

#### WETUMKA

J. R. Dutton, RLD, July, W. S. Main.

#### WEBBER FALLS.

D. W. McCorkle, RLD, July.  
Geo. Pollard, RLD, July.

#### WAURIKA.

H. D. Anderson, RLD.

#### WANETTE.

C. E. Meshew & Brewer, RLD, Oct., Main.

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### SUPPLEMENTAL LIST OF FEDERAL LIQUOR LICENSE HOLDERS OF THE STATE OF OKLAHOMA.

#### ARDMORE.

O. Bills, RLD, Dec.

Charley Boone, RLD, Mar., 113 E. Main.  
 L. N. Ford & Co., F. Dawson, RLD, Mar., 213  
 W. Main.  
 J. R. Merritt & J. R. Dyer, RLD, Feb., 206 E.  
 Main.  
 C. W. McCoy & Co., C. J. & C. H., RLD, July, 304  
 E. Main.  
 J. F. Hughes, RLD, July, 131 N. Caddo.  
 New State Cigar Store, Bob Terrell, C. Pyeatt &  
 B. Henson, RLD, Mar., 23 E. Main.  
 F. J. Ramsey, RLD, Sept., Main & Caddo.  
 Helen Regan, RMLD, Dec., 420 E. Main.  
 C. Shelton & T. Boone, RLD, July, 303 E. Main.  
 W. L. & L. L. Shaffner & Co., E. D. Haight, RLD,  
 July, 204 E. Main.  
 Sings Restaurant, Lim & Lee, RLD, Nov., E. Main.  
 C. D. Seagle & S. T. Brown, RLD, Nov., Appollos  
 Bldg.  
 Z. B. Terrell & Co., F. Dawson, RLD, July, 305  
 E. Main.  
 Z. B. Terrell & Co., F. Dawson, RLD, July.  
 J. T. Miller & Co., T. B. Starky, RLD, July, 228  
 W. Main.  
 Z. B. Terrell & Co., F. Dawson, RLD, Feb., 305  
 E. Main.  
 Yellowstone Cafe, W. J. Wilson & C. L. Miner,  
 RLD, Dec.

#### ANADARKO.

The Americus, Geo. Eohrer, RLD, July. Paid  
 under protest.  
 Anadarko Distg. Co., Logan Billingsby, RLD,  
 July.  
 Commercial Club, W. A. Scott, RLD, July.  
 Jockey Club, C. Peacock & S. Hurly, RLD, Sept.,  
 Main.  
 Rock Island Restaurant Co., Ed Elms, July.  
 Washita Club, Ford J. W. & Davis, W. S., RLD,  
 Sept.



Jefferson Club, C. Rhoades, RLD, July, Club Rooms.

W. H. Ferguson, RLD, July.

#### ADA.

Ada Drug Co., D. A. Holman, RLD, Oct.

G. M. Ramsey, RLD, July.

Witley & Birdwell, RLD, Dec.

F. Z. Hooly, RLD, July, Main.

I. H. Harris, RLD, Feb.

#### AFTON.

J. Metcalf, RLD, Jan., Main.

T. C. Mason, RLD, July.

#### ALTUS.

Gulbert Bros. & Thompson, RLD, July.

L. T. Davis, RLD, Mar., S. S. Locust.

#### APACHE.

Geo. W. McVicker, RLD, Jan.

#### BARTLESVILLE.

W. Browning & Co., Harry Croff, RLD, Dec., Kee-  
ler Bldg.

A. A. Higbee & C. Davis, RLD, Dec., Mounds  
round house.

W. D. Noble, RLD, Dec., 119 1-2 W. 2nd.

Jno. Thornton, RLD, Dec., W. 14th.

L. C. McCarley & Co., W. D. Shea, RLD, Dec.,  
W. 2nd.

W. L. Sevier & Co., W. D. Shea, RLD, Jan., 110  
W. 2nd.

Mrs. W. I. Parham, RLD, Jan., 110 W. 2nd.

J. C. Carnahan & Co., RLD, Sept.

### BEGGS.

H. Garwood, RLD, Dec.  
S. V. Thompson & B. Ward, RLD, Dec., Pool Hall.  
Model Drug Store, D. A. Flood, RLD, Dec., S. S.  
Main.

### BIG CABIN.

Clyde H. Jenkins, RLD, Dec., L5 B4.  
L. M. V. McDaniel, RLD, Nov.

### BRAGGS.

Sam Roach, RLD, July.  
Arthur Vann, RLD, Dec.

### BLANCHARD.

R. N. Belne, RLD, Dec.  
J. J. Prater, RLD, Mar., Rest.

### BLUE JACKET.

C. C. Jenkins, RLD, Dec. L 11—B 26.

### BIXBY.

Harry Franks, RLD, Dec., Waymire Bldg.

### BOLEY.

J. D. Welch & J. N. Burnett, RLD, July.

### BIGHEART.

Big Heart Drug Co., W. E. Connelly, RLD, Feb.,  
N. S. W. Main.

### BENNINGTON.

Mullins & Hartwell, RMLD, July.

### CHICKASHA.

H. Blackhall & H. Reed, RLD, Dec., 518 S. 2nd.  
H. Hines & H. Williams, RLD, Jan., 124 Dakota.  
W. Alexander, RLD, Jan., 317 Chick.  
H. C. Bondurant & H. E. Stewart, RLD, Sept.,  
Savoy Pool Hall.  
J. W. Cain, RLD, Nov.  
Ed Butler, RLD, Feb.

### CLINTON.

Geo. Chapman, RLD, Dec., Main.  
The Corner, Stanford and J. N. Fossett, RLD,  
July.  
Frisco Club, RLD, Sept.  
The Pablo, N. A. Hathaway, RLD, Jan.  
W. H. Fari, RLD, Jan.  
Chas. Reed, RLD, Dec.

### COALGATE.

Victor Bonham, WMLD, Sept., Main.  
C. A. McDow & C. Westfall, RLD, Jan., Main.  
Johnson Weltz, RLD, Jan.  
A. J. Drake, RLD, Jan.

### CALVIN.

A. B. Thompson, RLD, Dec.  
J. W. Billue, RLD, Dec.  
Fitzsimmons, Perry & Co., R. J. Greenwood, H.  
F. Bauer & P. DeMolens, RLD, Dec.

### CANUTE.

W. W. Pecinvosky, RLD, Jan., L7-B21.  
Joe Scheidamartal, RLD, Dec.  
J. B. Wilson, RLD, Dec.

### CHELSEA.

R. T. Morrison, RLD, Dec.

Chelsea Drug Co., S. M. Dodson & Y. G. Scudder,  
RLD, Jan.

#### CLEVELAND.

Cleveland Drug Co., R. L. Iron & T. M. Bailey,  
RLD, Feb.  
J. Sylvester, RLD, Mar.

#### CAPITOL HILL.

Capitol Club, R. L. Moore, RLD, Jan.

#### CATOOSA.

Palace Pool Hall, S. J. Mones, R. West & H. E.  
Hosie, RLD, Apr., E. Cherokee.

#### COUNCIL HILL.

O. J. Lovell, RLD, Feb., S. S. Main.

#### CENTRAHOMA.

R. T. Atkins, RLD, July.

#### COPAN.

V. E. Coalson, RMLD, Dec., N. of Main.

#### COWETA.

C. M. Nichols, RLD, July, E. S. Brdy.

#### CEMENT.

S. H. Graham, RLD, July.

#### CARBON.

Phillipp Paris, RLD, Jan.

#### CURRANVILLE.

Mathew Darman, RLD, Mar., W. S. of Main.

CITRA.

W. W. Flinchum, RLD, Feb., W. S. of St.

CORDELL.

J. J. Putnam, RLD, Dec., Blk. 54.

CHANDLER.

Perry Salmon, RLD, Jan., 1123 Mound.

CADDO.

Jno. F. Boydston, RLD, Apr.

COLLINSVILLE.

J. C. Isbell, RLD, Apr., Main.

DUSTIN.

C. S. Megginson, RLD, Dec.  
Chas. Agee, RLD, Oct.

A. B. Vandivere, RLD, July.

Jack Leard, RMLD, Mar., E. S. of Brdy.

DEWEY.

Eagles Lodge, No. 1681, RMLD, Dec., Hall.

DELAWARE.

Wolf & Co., W. F. Kivelt, RLD, Nov.

DUNCAN.

Smith & Warfield, RLD, Feb., N. S. of Main.

DURWOOD.

M. T. Kilpatrick, RLD, Apr., Main.

### ELK CITY.

J. C. Shell, RLD, Jan., Hotel.  
H. O. Hixon, RLD, Sept., 313 Main.  
R. P. McCarty, RLD, Sept., 601 Olive.  
G. Parham, RLD, Feb., Main.  
Wright & Co., F. A. Perkins, RLD, July.  
E. G. Miller & Co., S. S. Denahm, Jno. Cassey,  
Dock James & Chas. Hawkins, RLD, Apr., Madison.

### ENID.

E. Watrous, RLD, Sept., 125 N. Grand.  
B. L. Sinderson & H. G. Hilderbrandt, RLD, Oct.,  
E. Brdy.  
Al Flora, RLD, Oct., E. Brdy.  
E. E. Stickles, RLD, Nov., W. Brdy.  
Owl Drug Co., J. W. Gillespie, RLD, Jan.

### EARLSBORO.

W. L. Minnick, RLD, Nov.

### EDMOND.

Germania Club, D. H. Diperman, RLD, Oct.

### EDWARDS.

John Silva, RMLD, July.

### FT. GIBSON.

J. C. Berd, RLD, July.  
G. W. Roland, RLD, Sept.  
Ed Wagoner, RLD, July.

### FAIRLAND.

J. B. Bradley, RLD, Nov.

### FT. TOWSON.

Geo. Roberts, RLD, Aug.

### GUTHRIE.

- The Augusta, J. W. Wallace, RLD, July, E. Okla.  
Jefferson Club, RLD, Jan., Harrison.  
Okla. Distg. Co., C. S. Sherrill, RLD, Jan., S.  
Okla.  
The Pioneer, RLD, Jan., W. Okla.  
J. Zoll, RLD, Sept., Okla.  
The Atlas, RLD, Oct., Okla.  
Eureka Club & Windsor Waller, RLD, Dec., Okla.  
The Fantan, F. Mater, RLD, Nov., Okla.  
The Gun Club, T. Gunn, RLD, Nov., Harrison.  
The Mickle, F. Stanley, RLD, Jan., 237 W. Okla.  
Pleasure Club, J. Harris, RLD, Jan., Okla. Ave.  
Appears on Walter, RLD, Oct., 2nd St.  
The Fantan, F. Mater, RLD, Nov., Okla.  
The Hardley, F. Mater, RLD, Jan., Okla. Ave.  
The Martin, H. Backfiner, RLD, July.  
The Warren Club, Jno. Dickey, RLD, Dec., Harri-  
son.  
The Martin, H. Backfiner, RLD, July.  
The Warren Club, Jno. Dickey, RLD, Dec., Harri-  
son.  
The Bacon, Mrs. Ham, RLD, Feb., Okla.  
The St. Joe, J. Davis, RLD, Betw. Broad & Reno.

### GEARY.

- Geary Gun Club, E. Root, RLD, Dec.  
Chas. Markham, RLD, Oct.  
P. Nicholson & C. Cunningham, RLD, Sept.,  
Broadway.  
The Farmers Club, Jack Dunham, RLD, Sept.,  
Broadway.

### GARVIN.

- P. E. Johnson, RLD, Jan., Restaurant.  
J. E. Woodruff, RLD, Nov.  
Garvin Pool Hall Co., J. W. Caldwell & J. M.  
Chapman, RLD.

### GROVE.

S. W. Allen, RLD, Aug.  
Harper & Payton, RMLD, Oct.

### GLENPOOL.

M. T. Self, Jan., RMLD.

### GRANT.

C. C. Sanders, RLD, Jan.

### HOLDENVILLE.

R. J. Greenwood & H. F. Bauers, RLD, Dec., 1  
door S. Hotel Scott.  
C. M. Roberts & Co., H. M. Levan, WLD, Dec.  
J. E. Siple & Co., RLD, Oct.  
H. H. Slopey, ILD, Dec.  
Lutherman Goldman & Co., Bauer, Greenwood &  
DeMolens, RLD, Jan.  
The Delmonico, L. Shelton, RLD, Mar.  
The Turf, J. E. Nix & J. Feland, RLD, Mar.  
Greenwood, Bauers & DeMolens, RLD, Feb.

### HOOKER.

J. E. Duncan, RLD, Nov.  
Dr. J. D. F. Grage, RLD, Jan.  
Winter W. Lee, RLD, Jan., Brdy. & Ill.

### HOFFMAN.

J. H. Brown, RLD, Jan., Main St.

### HENRYETTA.

J. W. Nelson Hunting Club, RLD, Jan.

### HANNA.

R. J. Wilson, RLD, Nov.



### HASKELL.

G. T. Berryhill, RMLD, Mar., Brdy. & Com'l.

### HUGO.

W. B. Fulmer, RLD, Sept.

### HOBART.

Murphy Bros., T. C. & J. D., RMLD, Dec., S. S. Sq.

### INOLA.

C. G. Omstead & A. Wells, RLD, July, Jeff & Com.  
Inola Drug Co., RLD, Nov.

### KREBS.

Joe Pertino, WMLD, Dec.  
Mrs. M. Davis, RLD, Jan., Lincoln & 1st.

### KIEFER.

J. E. Etter, RLD, Nov. \*  
Central Drug Co., N. M. Kimbly & D. W. Adair,  
RLD, Dec.  
E. Jones, RLD, Aug.  
W. E. White, RLD, Nov.  
Alma Wilson, RLD, July.  
R. T. Gardner & Co., J. A. Walker, RLD, Dec., N.  
S. Main.  
E. H. Myrick, RLD, Dec.  
Ray Parks, RLD, Dec., N. S. Main.

### KELLYVILLE.

M. J. Hickey, RLD, Dec., N. S. Main.  
C. T. Hayes & W. D. Cambridge, RLD, Mar., J.  
Fisk Bldg.

### KINGSTON.

L. P. Click, RMLD, Sept.  
Sterling W. G. & Co., A. B. Littrell, RMLD, July.

### KAW CITY.

Kaw City Club, J. Harkey & L. Aerman, RLD, Jan.

### LAWTON.

Geo. Bundy, RLD, July.

John Ferguson & Co., RLD, Aug.

W. E. King, RLD, Aug., 19 D. Ave.

J. H. Ledgerwood, RLD, July, 301 E. Ave.

W. H. Stock, RLD, Dec.

### LEXINGTON.

Oliver Brosseaw, RLD, July.

Chili Co., J. Ray & L. Bingham, RLD, Nov.

J. M. Taylor & A. R. Farmer, RLD, July.

### LENAPAH.

C. Bartlett & B. Bro., RLD, Nov.

W. T. Cane, RLD, July.

Nove Ulyses, RLD, Apr., 6 Mi. East.

### LINCOLNVILLE

W. Nelson, RLD, July, Baxter Sprg., R. D. No. 2.

C. Dixon & H. M. McLeary, RLD, Mar.

### LUTHER.

C. W. Huntington, RLD, Mar.

### LUCAS.

G. A. Naylor & Co., RLD, Nov.

### LAMAR.

A. Chastain, RLD, Feb.

### MUSKOGEE.

W. L. Chancellor, RLD, Dec., 19 E. Okmulgee.

Social Club, L. E. Pratt, RMLD, Nov., Wall St.

A. Marder, RLD, Nov., 222 1-2 S. S. St.  
 J. F. Carver, RLD, Nov., E. S. S. Main.  
 C. J. Horkey, RLD, Nov., E. S. Main.  
 J. Lee & Co., R. D. Hanley, RLD, Nov., N. Mill.  
 M. L. London, RLD, Sept., 130 S. 2nd.  
 Mitton Drug Co., R. L. Bauch, RLD, Dec., 2nd and  
 Brdy.  
 Peter Pappas, RMLD, Dec.  
 Eagles Lodge, No. 537, RLD, Jan., 113-115 N. 2nd.  
 E. H. Bronson & Co., Paul Rial, RLD, Feb., Ok-  
 mulgee & 2nd.  
 E. Thrasher & Reno Hamlin, RLD, Mar., 18 N.  
 Chero.  
 L. Coburn, Oriental Cafe, RLD, Mar.  
 Richard McStarvick, RLD, Mar., Convention Hall.

#### MOUNDS.

H. F. Gleen & M. Willis, RLD, Sept.  
 E. C. Jones.  
 R. F. Kilker, RLD, Dec., Com'l Ave.  
 B. F. Kilker & J. F. Rambo, RLD, Oct.  
 J. H. Peterson & Byrum C., RLD, Aug.  
 M. Gleen & Co., RLD, Feb., Com'l Ave.

#### MIAMI.

J. H. McLeary & G. Carney, RLD, Dec., E. S.  
 Main.  
 State of Okla., RLD, Oct.  
 Jas. W. Duncan, RLD, Jan., 4 Mi. N.  
 P. A. Edwards, RLD, Jan., N. Main.  
 W. J. McGinty, RLD, Mar., R. D. No. 2.  
 Lee Gammon, RLD, Apr., 4th St.  
 John Tedrow, RLD, Apr.

#### MADILL.

O. E. Bandy, RLD, July, S. S. Main.  
 W. C. Ivy & Co., W. H. Deleshaw, RMLD, Feb.  
 C. A. Johnson & Co., R. H. Everett, RMLD, July.  
 Trammell Bros., J. H. & T. E., WMLD, Apr., S.  
 S. Sq.

### MAUD.

The Country Club, G. Hollis, RLD, Dec.  
English Kitchen, L. Rodway, RLD, Nov.  
The Farrier's Club, B. J. Browning & A. Ogee,  
RLD, Dec.

### McALESTER.

Otto Tronier, RLD, Dec., W. S. Main.  
A. M. McIntyre, RLD, Oct.  
J. C. Johnson, RLD, Feb., 100 Choctaw.

### MANGUM.

Mangum Pool Hall, G. A. Burger & A. B. Rude,  
RLD, Nov., Main.  
The National, E. D. & O. Pahlka, RLD, Nov., Main.

### MORRIS.

Morris Drug Co., W. Lusk, RLD, Dec., W. S. Main.

### MEEKER.

Meeker Pool Hall, W. B. Dickey, RLD, Mar.

### MACOMB.

M. H. Meek, RLD, Sept.

### McLOUD.

T. T. Nowakaskie & Co., RLD, Jan., N. Brdy.

### MILBURN.

B. E. Reeves, RLD, Feb.

### NOWATA.

Wm. Matterson, RLD, Nov., S. S. Dela.  
V. P. Leddington & F. Avery, RLD, Nov., Burns  
Dec.

Nowata Drug Co., W. King & E. Byrd, RLD, Nov.,  
Maple.

Jessie A. Cooper & Co., May Bass, RLD, Apr., E.  
S. Opera.

G. Loyd & W. E. Woods, RLD, Apr., Elm.

Nowata Drug Co., Wm. King, RLD, Jan.

Chas. Collins, RLD, Dec.

L. A. Deer & G. A. Boone, WLD, Jan.

Chas. Heady, WLD, Oct.

Lydia McWade, RLD, Jan., E. S. Opera House.

W. R. Street, RLD, Jan.

Turk Bros., J. & A. W., RLD, Jan.

Clifton & Hollis, RLD, Feb.

Geo. Campbell, RLD, Mar., Elm.

#### NORWICH.

W. H. Walker, RLD, Jan., Main.

#### OKLAHOMA CITY.

Club Restaurant, Chas. Simpson, RLD, Nov., S.  
S. Harvey.

Agnes Taylor, RLD, Sept., 312 1-2 E. Grand.

Okla. Merc. Co., D. Gershon, RLD, Dec.

H. L. Pearson, RLD, Aug., 129 W. Reno.

G. R. Parks, RLD, Oct., 19 S. Harvey.

Santa Fe Club, T. J. Goodwin, RLD, Nov., W. Cal.

F. M. Stump, RLD, July, Betw. Main & Grand.

Wm. Scherer, WLD, Aug., 607 W. Pott.

The Alto Club, Geo. Lewis, RLD, Dec., Grand.

The Buffett, T. Wilsford, RLD, Nov., W. 1st.

Broadway Club, B. Willie, RLD, Dec., N. Brdy.

G. Chesterfield, RLD, Dec., S. Rob.

California Flats, B. Twineing, RLD, Dec., W. Cal.

Carter & Co., J. T. Stremple, RLD, Sept., 130 W.

Reno.

The Classical, W. Bryan, RLD, Nov., Brdy.

Clarion & Co., L. Rodman & L. Belfort, RLD, Dec.,  
W. Grand.

The Elite, E. L. Price & L. A. Davis, RLD, Dec.,  
Brdy.

Frank's Cafe, F. Mishah & T. O'Neal, RLD, Dec.,  
Cal.

The Apex, RLD, Dec., Rob.

Ed Clydes North Side Club, RLD, Dec., W. Reno.

Germania Club, "V Schmidt," RLD, Dec., W.  
Grand.

M. Jones, RLD, Sept., Betw. Main & 1st.

L. LeRoy, "Queen Inn," RLD, Dec., W. Cl.

Cute Morgan, RMLD, July, 315 S. Rob.

G. & B. Rhoades, RLD, Sept.

Waggoner, H. A. & Co., J. M. McCarty, RLD, Sept.,  
117 S. Rob.

The Broadway Flats, C. E. Woods, RLD, Dec.,  
Brdy.

The Besmith, "Nambaur, B.," RLD, Jan., E.  
Grand.

Broadway Counter, J. Bell, RLD, Jan., S. Brdy.

The Crusoe, D. Myero, RLD, Jan., S. Rob.

W. H. Corbin, RLD, Jan., N. Brdy.

Chanousky & Turk, N. Eddstein, Mgr., RLD, Sept.,  
W. Pott.

Crescent Club, J. R. Blair, RLD, Sept., W. Pott.

The Classical, T. Laurence, RLD, Sept., Brdy.

E. C. Doerr, RLD, Nov.

E. C. Doerr, RLD, Nov.

Deacon G. & J. N. Martin, RMLD, Jan.

The Ferman Club, A. & W. Stiller, RLD, Jan.,  
Betw. Main & Grand.

The Grand, J. M. McCardy, RLD, Jan., Grand Ave.

The Harrison Club, H. Jacobson, RLD, Jan., W.  
Harrison.

The Harvey, E. B. Fuller, RLD, Jan., S. Harvey.

The Inn, A. Clark, RLD, Jan., W. Cal.

The Katy, E. Kemp, & H. Mallota, RLD, Jan., S.  
Brdy.

B. E. McDonald, RLD, Aug., 728 N. Brdy.

Mack's Cafe, B. McCracken, RLD, Nov., W. Cal.  
 D. Page, RLD, Jan., W. Reno.  
 The Stewards, R. S. Benson, RLD, W. Grand.  
 Santa Fe Club, M. A. Cohn & J. Martin, RLD, Jan.,  
 W. Cal.  
 The White House, A. Clark, RLD, Jan., S. Brdy.  
 The Cozy Corner, M. Swain, RLD, Jan., S. Harvey.  
 Claraday & Winslett, RLD, July.  
 The Circle, W. Ridgeway, RLD, Jan., W. Grand.  
 J. L. Jennings, RLD, Feb., W. Grand.  
 The Agee, Mangerman, RLD, Feb., W. Grand.  
 The Crystal, Geo. Randolph, RLD, Feb., Betw.  
 Rob. & Harvey.  
 Jacobson Pharmacy, RLD, Feb., 212 Grand.  
 Harvey Cafe, RLD, Jan., Betw. Cal. & Reno.  
 Kentucky Club, H. D. Shaw, RLD, Jan., Betw. 1st  
 & 2nd.  
 McGowen & Co., RLD, Feb.  
 The Missouri, Hazel Brown, RLD, Feb., Rob.  
 L. B. Miller, RLD, Mar., 204 W. Reno.  
 The Owl, S. Moore, RLD, Feb., S. Brdy.  
 The Omy, Wynderman & Cooper, RLD, Feb., W.  
 Reno.  
 Reno Club, C. Hassman, RLD, Feb.  
 The Shamrock, V. D. Dykens, RLD, Feb., Rob. &  
 Brdy.  
 South Pool Hall, RLD, Feb., W. Reno.  
 E. A. Elliott, RLD, Mar., 213 S. Harvey.  
 The Alto Club, G. Carruthers, RLD, Mar., W.  
 Grand.  
 The Athletic Club, A. Fleck & J. Taylor, RLD,  
 Mar., Main.  
 The Alta Club, W. L. Gregory, RLD, Mar., W.  
 Grand.  
 The Cigar Store, RLD, Mar., S. Rob.  
 The Cafe, J. Stokes, RLD, Mar., Robinson.  
 California Club, C. Smith, & L. Alderman, RLD,  
 Mar., S. S. Cal.  
 Crescent Club, F. Fisch, RLD, Mar., 1st St.  
 Chickasha Club, W. Brown, RLD, Jan., Chickasha.

The Central, J. Ban, RLD, Apr., W. 1st.  
 The Delsarte, B. Ramon, RLD, Mar., W. Reno.  
 Delmar Club, O. Ewing, RLD, Feb., W. Grand.  
 El Reno Real Estate, E. Lewis, RLD, Apr., W.  
 Reno.  
 Frank's Cafe, J. Hartman & T. Bruiza, RLD, Mar.,  
 W. Cal.  
 Gainesville Supply Co., R. Hudson, RLD, July.  
 High Life Club, J. A. Kessel, RLD, Mar., Main.  
 J. M. Hickey & Co., E. Buxton & Lon Ammer-  
 man, RLD, Mar., E. S. Pub. Road.  
 The James, S. Boyd, RLD, Mar., W. Cal.  
 The Jodge, O. Simmons & C. Bohanan, RLD, Mar.,  
 Rob.  
 J. Lester, J. Nelson & R. Carroll, RLD, Apr., W.  
 Reno.  
 The Metropolitan, C. D. Jones, RLD, Mar., Grand  
 Ave.  
 The Northern Club, M. T. Briggs, RLD, Mar.,  
 Brdy.  
 The Neighbors, M. Davis, RLD, Mar., Rob.  
 The Press Club, S. Martin & C. L. Nixon, RLD,  
 Mar., W. Main.  
 Palace Club, J. M. Govern, RLD, Mar., W. Reno.  
 Pearson & Sutton, RLD, Mar., W. Main.  
 People's Club, E. McCormick, RLD, Apr., W. 1st.  
 Rock Island Club, W. Spears & P. Ellington, RLD,  
 Mar., Brdy.  
 Rock Island Employees Club, J. Horner, RLD,  
 Mar., E. Main.  
 E. Thayer, RLD, Mar., S. Brdy.  
 The Triangle, G. R. Waltham, RLD, Mar., S. Rob.  
 White Rock, S. A. Jones, RLD, Mar., Cal.  
 W. & B. Distributing Co., F. Broadwell, RLD-  
 WLD, Mar.

#### OKEMAH.

W. H. Bogus, RLD, Dec.  
 J. Z. Groner & Co., W. & J. M. Crawford, RLD,  
 Dec.



Jelks & Co., RLD, Oct.  
D. J. Kezer, RLD, Nov.  
T. F. Talley, RLD, July.  
J. H. Childers, Jan., RLD.

#### OKMULGEE.

A. D. Clifton & Co., H. Hollis, WLD, Sept.  
March Coleman, WLD, Dec.  
Jno. Whiliamson, WLD, Oct.

#### OKEENE.

B. Gridley, RLD, Dec., Drug Store.

#### OWASSO.

W. E. Mendell & Dan Brown, RLD, July.

#### OCHELATA.

J. H. Horn & H. Foster, RLD, Dec., Ochelata St.  
C. V. Holcomb, RLD, Apr., Homing.

#### OLNEY.

W. J. Laughride, RLD, Jan.

#### PADEN.

Jno. Simmons, RLD, Nov.

#### PRAGUE.

Joe Alexander, RLD, Dec., E. S. Brdy.  
A. R. Harberson, RLD, Sept., E. S. Brdy.  
W. M. Ransdal & Co., Jas. R. Coleman, RLD, Dec.,  
N. S. Brdy.  
J. L. Gable, RLD, Jan., S. S. 11th.  
N. C. Tarter, RLD, Jan., E. S. Brdy.  
C. J. Hooter, RLD, Feb., E. S. Brdy.

### PERRY.

Western Trading Co., I. M. Niblack, RLD, July,  
Grand Ave.

Chas. Edwards, RLD, Dec., Grand Ave.

Teddy Lynn, RLD, Jan.

The Shamrock, M. Daly, RLD, July.

### PAWHUSKA.

W. H. Edison, RLD, Jan., Farrel Bldg.

J. S. Shetter, RLD, Jan.

### PORTER.

A. L. Ratterree, RLD, Oct., W. S. Main.

### PURCELL.

W. H. Dilleshaw, RLD, July.

### PENALOSA.

A. A. Beatty, RLD, Apr., Lots 59 & 57.

### QUAPAW.

E. H. Loy, RMLD, Dec.

### ROFF.

N. Whitley, RLD, Feb.

P. Straughn & B. H. Banier, RMLD, Feb., E. Main.

### RAVIA.

J. Hayes & T. Marrow, RLD, Jan.

### REX.

C. Silberhorn, RMLD, July.

## RAMONA.

Ramona Pharmacy, RLD, Mar.  
Jas. R. Doherty, RLD, Dec., W. S. 3rd.

## SAPULPA.

A. E. Austin, RLD, Dec., 319 1-2 E. Dewey.  
J. F. Tuller, WLD, Sept., 106 Hobson.  
J. M. Hicky, WLD, Nov., Hobson & Main.  
E. P. Smithson, RLD, Nov., 314 E. Dewey.  
L. H. Smithson, RLD, July, 10 N. Main.  
L. H. Ward, Y. C. H. Patton, RLD, Dec., Dewey.  
John L. Francis, RLD, Jan., 107 E. Hobson.  
E. L. Smart, RLD, Jan., 19 E. Dewey.  
Molly Charncella, RLD, Jan., L2-B23.  
S. Feeback, WLD, Nov., Dewey & Water.  
B. E. Burgess, RLD, Jan., E. Dewey.  
W. Donor, RLD, Feb.  
C. R. Heare, RLD, Feb., Pool Hall.  
Jessie Ripley, RLD, Feb., 26 N. Main.  
McDaniels & Overton, RLD, Feb., L27-B7.

## SHAWNEE.

J. W. Henderson & Rascoe, RLD, Dec.  
The Bell Club, O. Johnson, RLD, Dec., Bell St.  
Geo. Butler, RLD, July.  
W. S. Janeway, RLD, Nov., 315 E. Main.  
W. J. Petty, RLD, Jan.  
Shawnee Supply Co., R. F. Witherspoon, Agt.,  
WMLD, Nov.  
Star Restaurant, L. Coleman & F. Garrett, RLD,  
Dec., Union.  
The Turf, G. Morris, RLD, Dec., Main.  
Realty Co., W. Gray, RLD, Feb., 302 E. Main.  
East Pool Hall, A. E. McGee, RLD, Mar., E. Main.  
Mrs. Mary Noufal, RMLD, Apr., W. Main.  
J. M. Remington, RMLD, Mar., 114 Brdy.  
Louis Wallner, RMLD, Mar., W. Main.

### STILLWELL.

J. F. Hudson, RLD, Dec., Bradley Block.

### SEMINOLE.

W. E. Grisco, RLD, Dec., Drug Store.

Oscar Blair & Co., R. J. Greenwood, H T. Bauer  
& Peter Demolens, RLD, Jan.

J. W. Clary, RLD, Feb., Main.

### SPARKS.

J. W. Combs, RLD, Oct.

### SAYRE.

Bowling Club, W. C. Deal & C. E. Steel, RLD,  
Nov., Main.

The Pool Hall, E. Shields, RLD, Nov., Main.

### STONEWALL.

J. T. Henry, RLD, July.

A. E. Haven & L. L. Stoke, RLD, Jan.

M. V. Barberhouse, RMLD, Jan.

### SULPHUR.

N. H. Fox & J. M. Isgregg, RLD, Dec.

J. F. Mullens, RLD, Aug.

F. H. Hathorn, RLD, July.

D. F. Wheeler, RLD, Dec.

### SPENCER.

The Spencerian, S. Dyer, RLD, Mar.

### STOCKTON.

E. L. Blackman, RLD, Jan.

### S. COFFEYVILLE.

Taylor Hicks, RLD, Apr., Willow St.

### STROUD.

C. A. Bowman, RLD, Mar.

### SASAKWA.

H. F. Greenwood, Bauers & DeMolens, RLD, Feb.

### TULSA.

G. Deer & Co., W. H. Steen, RLD, Nov., 1st & Boston.

Eagles Lodge, RMLD, Dec., 15 1-2 2nd.

Will Bell, RLD, July, N. E. Greenwood.

Fulsom & Cole, RLD, Nov., 120 E. 1st.

E. W. Hunter & A. R. Juby, RLD, Oct., 128 Greenwood.

E. M. Harris, RLD, Nov., 401 E. 1st.

W. H. Hudson & Co., A. Morgan, RLD, Aug., 2nd & Greenwood.

W. M. Hall & Co., J. A. Ballard, RMLD, Dec., 1st & Elgin.

F. Holloway, Geo. Ricker & Co., T. Hackthorn, RLD, Dec., 114 Main.

Ruben Lee, RLD, Sept., Main & 3rd.

E. L. Martino, RLD, July, 106 E. 3rd.

B. H. McLaughlin & Co., July.

T. E. Wallace, July.

D. L. Lewis, July, WMLD, Aug., Boulder.

H. H. Sindair, July.

B. Duke, July.

B. H. Brunswick, July.

Quigsley & Co., WLD, Oct., 123 Main.

W. H. Shisman, RLD, Oct., 23 N. Main.

B. S. Beard, RLD, Dec., 106 W. 1st.

A. R. Juby & E. W. Hunter, WLD, Dec., 525 E. 1st.

A. R. Juby & E. W. Hunter, RLD, July, 525 E. 1st.

- J. W. Lindsey & Co., W. J. Langford, RLD, Dec.,  
501 E. 3rd.  
Creekmore & Leonard, WMLD, July.  
East End Drug Store, J. M. Key, WMLD, July,  
600 Archie.  
F. Hackathorn & Co., C. E. Dwyer, WMLD, July,  
112 S. Main.  
Guy Harper, WMLD, Apr.

#### TECUMSEH.

C. W. Martin, RLD, Jan., E. Wash.  
T. D. Smith, RLD, Sept., L15-B33.  
G. R. Ward, RLD, Aug., Ward Gallery.  
J. M. Cooper, RLD, Aug., W. Wash.  
W. L. Johnson, RLD, Oct.

#### TISHOMINGO.

A. S. Povier & W. P. Betts, RLD, Dec.  
G. Roy Van & J. C. Roan, RLD, Feb., Main &  
Kemp.  
Capitol Drug Co., Van Noy & C. J. Road, RLD,  
Feb.

#### TUPELO.

J. E. Clark, RLD, July.  
J. W. Ellington, RLD, July.  
J. C. & W. R. George Brs., RLD, Sept.

#### TAHLEQUAH.

Cherokee Drug Co., W.H. S. Brown, RLD, Jan.,  
Muskogee Ave.

#### TALALA

E. Y. Bass, RLD, July.

**VIOLET.**

Ed Stegall & Co., T. A. Smith, RLD, Nov., R. F.  
D. No. 2.

**VINITA.**

John S. Martin, RLD, Jan.  
C. C. Butler & A. J. Miachel, RLD, Nov., Ill Ave.  
W. L. Lyons, WLD, Jan., Ill Ave.

**VIAN.**

Till Conley, RMLD, Dec., Vian.

**WELEETKA.**

J. C. Boyd & Co., L. S. Harper, RLD, Nov.  
L. S. Harper, RLD, Oct.  
Tittle & Anderson, RLD, Jan., L21-B17.

**WILBURTON.**

Peter Komiskey, RMLD, July.  
Rossi Dan, WMLD, July, Under Protest.

**WARWICK.**

J. W. Vaughn, RLD, Dec., L14-B58.

**WYBARK.**

T. J. Young & R. J. Miles, RLD, Aug.

**WALTERS.**

P. L. Robinson, RLD, Oct., Broadway.

**WANETTE.**

L. T. Branham & Co., C. M. Taylor, RLD, Sept.,  
O. K. Yard.  
Wanette Club, A. M. Cleardy, RLD, Sept.

J. A. Lanhrie & Co., RLD, July, N. S. Main.

WAGONER.

M. J. Wade, RLD, Oct.

Lee & Co., RLD, Aug.

J. W. Garner, RLD, Apr.

WETUMKA.

H. H. Slopey, RLD, Dec.

W. L. McBride, RLD, Dec.

Williams & Co., RLD, Jan.

WELLSTON.

F. D. Brown, RLD, Jan., 2nd & 6th.

WELCH.

J. H. Can Ausdavle, RLD, Oct.

WEWOKA.

Elizah C. Chiles, RLD, Mar.

Peter Demolens Co., RLD, Mar., W. S. of St.

WYNNEWOOD.

J. M. Knox, RLD, Jan.

WARUIKA.

Stuart Woodie, RLD, Mar., E. S. Main.

WELEETKA.

E. W. Tittle & T. Flanney, RLD, Mar.

That by the said Act approved June 16, 1906, it was provided as a condition precedent to the admission of the State of Oklahoma into the Union, that in



its Constitution it should provide that the payment of the special tax required of liquor dealers by the United States, of any person within those parts of the proposed State then known as the Indian Territory and the Osage Reservation, and within any other parts of said proposed State which existed as Indian Reservations on the 1st day of January, 1906, should constitute prima facie evidence of the intention of such persons to violate that provision of the Act of June 16, 1906, in reference to the prohibition of the manufacture, sale, barter, giving away, or otherwise furnishing intoxicating liquors which it was provided as a condition precedent that the Constitution of said proposed State should provide for.

That by a resolution of the Constitutional Convention of said state, adopted on the 22nd day of April, 1907, the provisions of the Act of June 16, 1906, were accepted irrevocably. That said resolution was in the following words and figures:

"Section 497—Enabling Act Accepted by Ordinance Irrevocable.—Be it Ordained by the Constitutional Convention for the proposed State of Oklahoma, that said Constitutional Convention do, by this ordinance irrevocable, accept the terms and conditions of an Act of the Congress of the United States, entitled, "An Act to Enable the People of Oklahoma and the Indian Territory to form a Constitution and State Government

and be admitted into the Union on an equal footing with the original States; and to Enable the People of New Mexico and of Arizona to form a Constitution and State Government and be admitted into the Union on an equal footing with the original States," approved June the sixteenth, Anno Domini, Nineteen Hundred and Six.

"Sec. 498.—Certificate of President of Convention.—I hereby certify that the foregoing ordinance Accepting the Terms and Conditions of the Enabling Act as the same has heretofore been passed and engrossed, was engrossed with the engrossed copy of the Constitution on parchment, was read as engrossed and roll call had thereon and the same duly adopted by a majority of the votes of all the delegates elected to and constituting this Convention, at 11:41 o'clock, a. m., this 22nd day of April, Anno Domini, 1907.

WM. H. MURRAY,  
President of Convention.

Attest:

JOHN McLAIN YOUNG,  
Secretary."

That said State through its Constitutional Convention submitted to the vote of the people thereof the question of adopting a provision prohibiting the manufacture, barter, sale, giving away or otherwise furnishing intoxicating liquors in said State, which said provision was adopted by the people of said State on the 17th day of September, 1907, and is now and was ever since the 16th day of November, 1907, the

law of said State, and the same is in the following words and figures:

"Sec. 499.—The manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within this State, or any part thereof, is prohibited for a period of twenty-one years from the date of the admission of this State into the Union, and thereafter until the people of the State shall otherwise provide by amendment of this Constitution and proper State legislation. Any person, individual or corporation, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale, and wine, contrary to the provisions of this section, or who shall, within this State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from one place within this State to another place therein, except the conveyance of a lawful purchase as herein authorized, shall be punished, on conviction thereof, by fine not less than fifty dollars and by imprisonment not less than thirty days for each offense: Provided, That the Legislature may provide by law for one agency under the supervision of the State in each incorporated town of not less than two thousand population in the State; and if there be no incorporated town of two thousand population in any county in this State, such county shall be entitled to have one such agency, for the sale of liquors for medicinal purposes; and for the sale, for industrial purposes of alcohol which shall have been denatured by some process approved by the United States Commissioner of Internal

Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum of not less than one thousand dollars, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the State shall constitute prima facie evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the liquor is to be used, and no sale shall be made for medicinal purposes except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a bona fide prescription signed by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered, and the register thereof, together with the affidavits and prescription pertaining thereto, shall be open to inspection by any officer or citizen of the State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for treatment of disease which after his own personal diagnosis he shall deem to require such treatment, shall, upon conviction thereof, be

punished for each offense by fine of not less than two hundred dollars or by imprisonment for not less than thirty days, or by both such fine and imprisonment; and any person connected with any such agency who shall be convicted of making any sale or other disposition of liquor contrary to these provisions shall be punished by imprisonment for not less than one year and one day. Upon the admission of this State into the Union these provisions shall be immediately enforceable in the courts of the State: Provided, That there shall be submitted separately, at the same election at which this Constitution is submitted for ratification or rejection, and on the same ballot, the foregoing Article—entitled "Prohibition," on which ballot shall be printed FOR STATE WIDE PROHIBITION and AGAINST STATE WIDE PROHIBITION: And Provided Further, That, if a majority of the votes cast for and against State-wide prohibition are for State-wide prohibition, then said Article——shall be and form a part of this Constitution and be in full force and effect as such, as provided therein; but, if a majority of said votes shall be against state-wide prohibition, then the provisions of said article shall not form a part of this Constitution and shall be null and void.

"I hereby certify that the above and foregoing provision and ordinance submitting the same separately to a vote of the people of the State as heretofore adopted on the 11th day of March, A. D., 1907, as above engrossed was adopted as engrossed upon roll call for the

purpose of such separate submission, on this the 22nd day of April, Anno Domini, 1907.

WM. H. MURRAY, President,  
The Constitutional Convention of the proposed State of Oklahoma.

ATTEST:

JOHN McLAIN YOUNG,  
Secretary."

That pursuant to said constitutional provisions there was duly enacted by the legislative power of said State an act, being Chapter 69 of the Session Laws of Oklahoma of 1907-1908, approved March 24, 1908, which since said 24th of March, 1908, has been and is now the law in said State which is in the following words and figures:

#### CHAPTER, 69, ARTICLE 1.

##### AN ACT.

To Establish a State Agency and Local Agencies for the sale of Intoxicating Liquors for Certain Purposes; and Providing for Referring the Same to the People; Prohibiting the manufacture, Sale, Barter, Giving Away or Otherwise Furnishing of Intoxicating Liquors, Except as Herein Provided; Providing for the Appointment of an Attorney, and for the Enforcement of the provisions of This Act; Making an Appropriation and Declaring an Emergency.

Be it Enacted by the People of the State of Oklahoma:

## ARTICLE I.

"Section 1. A State Agency is hereby created and established at the Capital of the State. It shall be under the charge, supervision and management of a Superintendent who shall be appointed by, and hold office during the pleasure of the Governor. He shall take and subscribe the oath prescribed by law and shall give bond in a sum, to be fixed by the Governor, of not less than twenty-five thousand dollars, conditioned for the faithful discharge of his duties, and shall receive a salary, to be fixed by the Governor, not to exceed eighteen hundred dollars per annum, payable monthly. He shall, under the direction of the Governor, employ such assistants, clerical help and laborers, as may be necessary to carry out the provisions of this Act. As soon as said Superintendent shall have been appointed and qualified, he shall procure a place suitable for the State Agency, where shall be received, and kept, packed, sealed, labeled, numbered and shipped out all liquors purchased or acquired and for the use of the State under the provisions of this Act. He shall estimate, as nearly as can be, the quantity and kind of intoxicating liquors, and other supplies necessary for the use of the State Agency for a period of not more than three months, and shall invite, and by all reasonable means seek to procure, by advertisement and otherwise, bids from manufacturers and wholesale dealers for furnishing the same. He shall establish a standard of quality to which all purchases made for the State Agency shall conform, and upon which all bids shall be based; shall establish suitable rules and regulations for testing and de-

termining the quality of all liquors purchased or acquired for the State Agency under the provisions of this Act. He shall also, within the first five days of each succeeding month after the first purchase of liquor, as the needs of the State Agency may require, make out and keep open for public inspection a list of all liquors and other supplies to be purchased during the ensuing month, stating the kind, grade, quality and quantity, and fixing a date for the purchase thereof. No purchase of any kind of liquor shall be made at one time more than is estimated to be necessary for the use of the State Agency for the period of three months. All contracts for the purchase of such liquors shall be executed in duplicate by the seller or his agent, and by the Superintendent, and approved by the Governor. All bids shall be opened, the terms of all purchases discussed, and all contracts executed publicly; Provided, however, that the Governor and the Superintendent may reject any and all bids. A copy of every such contract shall be kept in the office of the Superintendent, and the original thereof filed with the Governor. No contract shall be made for the purchase of any liquors, with or through any person who is related to the Superintendent, or the Governor within the third degree.

"Sec. 2. At the end of each month, the Superintendent shall, until otherwise provided by law, make out, in duplicate, an itemized statement under oath, for such month, showing the amount of liquor or other property purchased or otherwise acquired, the amount disposed of; the amount on hand; the amount of cash expended, received and on hand. One copy of such monthly statement shall be filed with the Governor and the other with the



State Auditor. He shall also make an annual report at the end of each fiscal year. He shall deposit all cash received from the sales of liquors, or from other sources, in such bank or banks as the Governor shall designate, and shall require security therefor to be deposited with the State Treasurer, of like kind and amount as required for deposits of public funds. He shall, from time to time, purchase such additional liquors as may be required to supply the demand of local agents and otherwise use the funds in his possession as may be necessary in carrying out the provisions of this Act; Provided, that all checks drawn on deposits by the Superintendent shall be countersigned by the Governor.

Sec. 3. Until otherwise provided by law, the Superintendent shall cause all spirituous liquors except alcohol for pharmaceutical, scientific, or industrial purposes, received at the State Agency where the same are purchased in bulk, to be put up in suitable vessels or packages of uniform size and full measure, containing not less than one-half pint nor more than one-half gallon. The maximum size for packages of vinous liquors, so put up, shall not exceed one gallon. Each vessel shall be securely sealed safely to enclose and preserve the liquors against leakage, and each seal shall have an impression thereon, of a design to be prescribed by the Superintendent, so that the vessel can not be opened without destroying the seal. Each package of liquor of any kind, before shipping from the State Agency, shall have placed thereon a label bearing a serial number, and correctly stating the kind, quantity and quality, or standard of liquor, therein contained, and such other matter as the Superintendent may direct, and shall have plainly printed thereon the price,

at which the package is to be sold. Said label shall have printed thereon the following:

"This package was sealed and labeled at the State Agency and if sold for any different price than that printed on this label or if the seal on this package be broken when sold, the buyer or his assigns may, on proof thereof, recover judgment against the local agent selling same, on his official bond, for the sum of One Hundred (\$100) Dollars.'

"Sec. 4. Until otherwise provided by law the selling price to be marked upon each package of liquor and to be charged by local agents for all liquors sold under the provisions of this Act, shall be computed by counting the cost of all liquors purchased or acquired for the State Agency, to which shall be added the salaries, printing, freight, special taxes, and all other necessary expenses lawfully incurred, and to the cost so computed shall be added not to exceed fifty per centum; provided, however, that the price so fixed shall be uniform throughout the State for packages of like size and kind; and provided further, that alcohol for pharmaceutical, scientific or industrial purposes, shall not be sold at a higher price than the cost to the State Agency, plus the cost of container and freight with a charge for handling not exceeding three per centum.

"Sec. 5. One agency only for the sale of intoxicating liquors for lawful purposes is hereby established in each incorporated town, within this State of two thousand population or more, and in each county having no such incorporated town of two thousand population, at some place to be designated by the Superintendent; Provided, however, that one Agency for the sale of intoxicating liquors

for lawful purposes may be established by the Superintendent, subject to the approval of the Governor in any incorporated town within this State of one thousand population or more, or one such agency at any other place in this State where a public necessity exists therefor; Provided further, the Superintendent may prescribe rules and regulations, subject to the provisions hereinafter contained, or that may be hereafter provided by law, under which he shall furnish such liquors to apothecaries, or pharmacists, who actually and in good faith, engaged in business as such, from the State Agency or from such convenient warehouses as he may in his discretion establish.

"Sec. 6. Until otherwise provided by law, a local agent shall be appointed by the Governor, at each local agency, who shall be not less than twenty-one years of age, shall not be addicted to the use of intoxicating liquors as a beverage and shall not have been engaged in the manufacture or sale of any vinous, spiritous or malt liquors or any imitation thereof or substitute therefor, within five years next preceding his appointment, and who shall not be a practicing physician. He shall take the oath prescribed by law and shall execute a bond in the sum of not less than one thousand (\$1000) dollars, conditioned that he will not sell any such liquors except in the manner provided by law, and that he will faithfully account for all moneys or property that may come into his hands and do and perform all things required to be done or performed by him as such agent and shall well and truly perform all judgments, and pay all fines and penalties adjudged against him.

## ARTICLE II.

"Section 1. The Superintendent shall pay all special taxes required of liquor dealers by the laws of the United States for the State Agency and for all local agencies and shall prepay all freight or express charges on shipments from the State Agency to the railroad station of the local agent. He shall furnish each local agency, when established, with a stock of liquor from the State Agency of various kinds and in packages of assorted sizes, as he may deem necessary, and shall, from time to time, furnish such additional liquors as may be necessary reasonably to maintain the stock on hand at local agencies. Provided, however, that no greater quantity shall be furnished to a local agency, at any one time, than is estimated to be reasonably necessary for three months' supply. All liquors furnished to local agents shall remain the property of the State until disposed of by them under the provisions of this Act.

"Sec. 2. The Superintendent shall keep an account with each local agent, showing, in detail, the date of each shipment, the total number of packages furnished and the registered number of each and the price at which the same are to be sold, and shall, at the time of each shipment, send to the local agent, a correctly itemized statement showing the number of packages shipped and the registered number of each. He shall credit each local agent with all cash received and with a commission of ten per cent upon each sale reported and paid for.

"Sec. 3. The local agents shall, on Monday of each week, make out and send to the Superintendent a correct transcript of the 'Register of Intoxicating Liquors Sold,' showing all sales made during the preceding

week, and shall, at the same time, remit to the Superintendent the money received for all sales during the preceding week, less ten per centum to be deducted and kept by the agent as full compensation for his services as such.

"Sec. 4. It shall be unlawful for any agent to sell any package at a different price than that printed thereon, or to sell any package upon which the seal has been broken. Any agent who shall violate the provisions of this Section shall be guilty of a misdemeanor.

"Sec. 5. No sale shall be made by a local agent of any such liquors for any purpose except upon the sworn statement of the applicant in writing, setting forth the name of the person by whom, and the purpose for which such liquor is to be used, and such sworn statement shall be accompanied by a bona fide prescription signed by a licensed practicing physician, which prescription shall not be filled more than once. For the purpose of taking such sworn statement each local agent is hereby authorized to administer oaths, but shall make no charge therefor. The local agent shall require the purchaser to remove the package from the agency before breaking the seal, and shall not allow the same, or any part thereof, to be used in or about any part of the local agency, or in any room connected therewith. Any purchaser who breaks the seal on any such package of liquor within the local agency room or in any room connected therewith shall be guilty of a misdemeanor.

"Sec. 6. The Superintendent shall furnish each local agent with all books, records, and blanks necessary for the conduct of such agency. He shall furnish each local agent with a record book, which shall be known as 'Register of Liquor Received from the State Agency,' in which said local agent shall

keep a correct record of all liquors received by him from the State Agency, showing the date, kind, and amount of liquor, and the registered number of each package, received. The Superintendent shall also furnish each local agent with a book to be known as 'Register of Intoxicating Liquors Sold,' in which the agent shall keep an account of the kind and quantity of liquor sold, showing the name and address of the purchaser, by what physician prescribed, the amount of money received therefor, the registered number of each package, and the day and hour of each sale. The Superintendent shall also furnish each local agent with a book to be known as 'Register of Physician's Prescriptions for Intoxicating Liquor,' in which the local agent shall make a true abstract of every prescription for intoxicating liquors filled by him, and he shall also file and keep the original of each prescription so filled, and shall mark the same 'Cancelled' with the date written thereon, when the same was filled and cancelled. The Superintendent shall also furnish each local agent with a record book to be known as 'Register of Affidavits for the Purchase of Intoxicating Liquors,' in which the agent shall enter all such affidavits filed with him. He shall also keep on file and preserve the original affidavits marked 'Cancelled' with the time written thereon when each affidavit was filed and cancelled. Attached to each affidavit shall be a receipt for the liquors contained therein, in such form as to give the time of sale, the name and residence of the buyer, the registered number of the package, the quantity and kind of liquor purchased, and the price paid therefor. Said affidavits and receipts shall be consecutively numbered.

"Sec. 7. Each local agency shall be kept

in a place approved by the Superintendent and shall not be removed except on his written approval.

"Sec. 8. Each apothecary or pharmacist doing business in this State, before acquiring, keeping, or using in or about his said pharmacy or apothecary any liquors, the sale of which is prohibited by this Act, shall execute a bond in the sum of not less than One Thousand (\$1,000) Dollars, to be approved by the Superintendent, conditioned that none of said liquors shall be used or disposed of for any purpose other than in compounding or preserving medicines the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and that he will not violate any of the provisions of this Act. Said bond shall be recorded in the office of the Superintendent and the original thereof deposited with the Secretary of State.

"It shall be unlawful for any retail apothecary or pharmacist to have in or about his said apothecary or pharmacy more than eight gallons of alcohol and five gallons of other liquors at any one time, or to use or keep in or about his apothecary or pharmacy any such liquors for any purpose whatsoever, except such liquors as shall have been furnished by the Superintendent under the provisions of this Act. Any person who shall violate the provisions of this Section shall be guilty of a misdemeanor, and in addition thereto shall be liable to a penalty of not less than fifty (\$50) dollars, nor more than five hundred (\$500) dollars for each offense. It shall be the duty of the County Attorneys to bring suit on any bond executed by such persons for the recovery of any such penalty.

"Sec. 9. The Superintendent may, un-

der regulations to be prescribed by him, provide for furnishing alcohol for scientific purposes to scientific institutions, universities, colleges, or hospitals, authorized to purchase the same, free of tax under the laws of the United States.

"Sec. 10. The Superintendent shall prescribe the necessary rules and regulations for the purchase, handling and sale of alcohol, for industrial purposes, which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue.

"Sec. 11. Any physician, who shall prescribe any intoxicating liquors, except for the treatment of disease, which, after his own personal diagnosis, he shall deem to require such treatment, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than two hundred (\$200) dollars, nor more than one thousand (\$1,000) dollars, or by imprisonment not less than thirty days nor more than one year or both such fine and imprisonment.

"Sec. 12. If the Superintendent or any employee of the State Agency shall accept or receive any gift, gratuity, or thing of value directly or indirectly for or on account of any matter or thing done or omitted to be done by him in his official capacity, or by any assistant, clerk, local agent, or other person in his employment or under his control, he shall be deemed guilty of a felony, and shall be punished by imprisonment in the State Penitentiary for not less than one year and one day nor more than ten years for each offense, and in addition thereto, shall be liable on his official bond to a penalty of one thousand (\$1,000) dollars, at the suit of the State, to



be recovered in any court of competent jurisdiction.

"Sec. 13. Any local agent, who shall sell, use or otherwise dispose of any intoxicating liquors otherwise than as provided in this Act, or who shall have in his possession or in or about his said agency any such liquors not furnished by the State Agency, shall be guilty of a felony and on conviction thereof shall be punished by imprisonment for not less than one year and one day, nor more than seven years, and in addition thereto, shall be liable on his official bond at the suit of the State, in any court of competent jurisdiction, for not more than one thousand dollars.

"Sec. 14. Any person who shall counterfeit or make any false imitation of any seal or label of the State Agency, or who shall have in his possession any such counterfeits or false imitations, or any plates for the preparation thereof, for the purpose or with the intention of using the same, or who shall forge or falsely write the name of any physician to a prescription for any intoxicating liquors, or who shall knowingly present to be filled any such false prescription, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment for not less than one year and one day nor more than five years.

"Sec. 15. It shall be unlawful for any local agent to sell more than one package of vinuous or spirituous liquor to one person on the same day, nor more than three gallons of malt liquor to one person in one day. The agent shall endorse in red ink, his initials and the date of sale on each package of liquor sold by him under the provisions of this Act.

"Sec. 16. The Superintendent shall cause examinations of the records and stock

on hand of all local agents, to be made at such times and in such manner as he may deem necessary.

"Sec. 17. If any local agent shall violate the provisions of this Act, where no other specific penalty is imposed, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars and by imprisonment in the county jail not less than thirty days or not more than six months.

"Sec. 18. Any person who shall steal, take seize, or carry away or appropriate to his own or another's use, any intoxicating liquors of any kind, from the State Agency or any local agency, or from any common carrier transporting same from the State Agency to any local agency, or from any officer having the custody thereof, shall be guilty of larceny and punished as now provided by law.

### ARTICLE III.

"Section 1. It shall be unlawful for any person, individual or corporate, to manufacture, sell, barter, give away, or otherwise furnish except as in this act provided, any spirituous, vinous, fermented or malt liquors, or any imitation thereof, or substitute therefor; or to manufacture, sell, barter, give away, or otherwise furnish any liquors, or compounds of any kind or description whatsoever, whether medicated or not, which contain as much as one half of one per centum of alcohol, measured by volume, and which is capable or being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States; or to ship or in any way carry such liquors from one place within this

state to another place therein except the conveyance of a lawful purchase as herein authorized, or to solicit the purchase or sale of any such liquors, either in person or by sign, circular, letter, card, price list, advertisement or otherwise, or to distribute, publish or display any advertisement, sign or notice where any such liquor may be manufactured, bartered, sold, given away, or otherwise furnished, or to have the possession of any such liquors with the intention of violating any of the provisions of this Act. A violation of any provisions of this Section shall be a misdemeanor, and shall be punished by a fine not less than fifty (\$50) nor more than five hundred (\$500) and by imprisonment for not less than thirty days nor more than six months; Provided, however, that the provisions of this Act shall not apply to the manufacture and sale of unfermented cider and wine, made from apples, grapes, berries or other fruit, grown in this State, and to the use of wine for sacramental purposes in religious bodies.

"Sec. 2. The payment of the special tax required of liquor dealers by the United States by any person within this State, except local agents appointed as hereinbefore provided, shall constitute prima facie evidence of an intention to violate the provisions of this Act.

"Sec. 3. Every person who shall within this State, directly or indirectly, keep or maintain by himself, or by associating or combining with others, any club room or other place in which any liquor, the sale of which is prohibited by this Act, is received or kept for the purpose of selling, bartering, giving away, or otherwise furnishing, or for distribution or division among the members of any club or association, by any means whatsoever, and every

person who shall sell, barter, give away or otherwise furnish, distribute or divide any such liquors so received or kept shall be guilty of a misdemeanor.

"Sec. 4. It shall be the duty of any judge of the District or County Court upon a request of the County Attorney or upon the complaint of any other person, supported by affidavit to issue subpoenas for any witnesses that may have knowledge of the violation of any of the provisions of this Act, and such judge shall have power and it shall be his duty to compel such witnesses to appear before him and give testimony and produce any books or papers that will assist in the prosecution of any person who may be charged with violating any of the provisions of this Act. The testimony of such witness shall be reduced to writing, by said judge or by some person designated by him, and the same shall be signed by such witness. No person shall disclose any evidence so taken, nor disclose the name of any person so subpoenaed, and examined except when lawfully required to testify as a witness in relation thereto, and the unlawful disclosure by any person of any such evidence, or of any matter or thing concerning such examination shall be a misdemeanor. Should said judge be unable to take the testimony of said witness for want of time, he may appoint a special judge who shall possess the qualifications and have the power in respect to such matters as a judge of the County Court. Should any witness refuse to appear before such judge, in obedience to such subpoena, or refuse to produce any books or papers when lawfully required to do so, or having appeared, shall refuse to answer any proper questions, or sign his testimony when so required, it shall be the duty of the said judge to punish as for contempt in accordance with the constitution and laws of the State. The

special judge appointed under the provisions of this Section shall take oath prescribed by the Constitution for State Officers and shall receive the compensation allowed by law to Notaries Public for taking depositions, and be paid by the County in which such proceeding is had, upon the order of the Court in which the proceeding is pending. When it is shown upon the taking of such testimony that there is probable cause to believe that any person has violated any of the provisions of this Act, said judge shall issue a warrant for the arrest of such person, directed to any officer authorized to serve criminal process, commanding that person so charged be forthwith brought before a court having jurisdiction of the offense charged.

"Sec. 5. If it shall be made to appear to any judge of the District or County Court or justice of the peace that there is probable cause to believe that liquors are being manufactured, sold, bartered, given away, or otherwise furnished, or are being kept for the purpose of selling, bartering, giving away or otherwise furnishing liquors in violation of this Act, such judge or magistrate shall issue a warrant directed to any officer of the county whom the complainant may designate, having the power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant and to seize all such liquors there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for such illegal manufacture, selling, bartering, giving away, or otherwise furnishing of such liquors, and safely keep the same and to make return within three days of said warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession the same was

found, if any, and if no person be found in the possession of said property, his return shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such liquors, furniture or fixtures so seized, and if no person be found in the possession thereof a copy of said warrant shall be posted on the door of the building or room wherein the same are found.

"Sec. 6. Upon the return of such warrant as provided in the next preceding section, the magistrate or judge shall fix a time, not less than ten days nor more than thirty days thereafter, for hearing of said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof was used in violation of any of the provisions of this Act. At such hearing any party claiming an interest in any such property may appear and be heard, and if upon such hearing it shall appear that any property so seized was knowingly used, or permitted to be used, in violation of any provision of this Act, the same shall be adjudged forfeited to the State, and shall be delivered to the custody of the Superintendent to be disposed of under the provisions of this Act. If upon such hearing it shall appear that any property so seized was not kept or used for an unlawful purpose, or if any person shall show that he is the owner of any furniture, fixtures or other property seized under such warrant, and that the same or any part thereof were unlawfully used without his knowledge or consent, the same shall be returned to its lawful owner.

"Sec. 7. No liquors, vessels, fixtures, furniture or other property seized by virtue of any warrant issued under the provisions of this Act shall be taken from the possession of the officer seizing same under any replevin or other process.

"Sec. 8. No such warrant shall issue but upon probable cause, supported by oath or affirmation, describing as particularly as may be the place, to be searched, or the person or thing to be seized.

"Sec. 9. No warrant shall be issued to search a private residence, occupied as such, unless it, or some part of it, issued as a store, shop, hotel, boarding house, or place for storage, or unless such residence is a place of public resort.

"Sec. 10. When a violation of any provision of this Act shall occur in the presence of any sheriff, constable, marshal, or other officer having power to serve criminal process, it shall be the duty of such officer, without warrant, to arrest the offender, and seize the liquor, bars, furniture, fixtures, vessels and appurtenances thereunto belonging, so unlawfully used, and to take the same immediately before the Court or judge having jurisdiction in the premises, and there make complaint under oath, charging the offense so committed and he shall also make return setting forth a particular description of the liquor and property seized, and of the place where the same was so seized, whereupon the court or judge shall issue a warrant commanding and directing the officer to hold the property so seized in his possession until discharged by due process of law and such property shall be held and a hearing and adjudication on said return had in like manner as if the seizure had been made under a warrant therefor.

"Sec. 11. All liquors adjudged forfeited to the State under the provisions of this Act, shall as far as practicable be utilized by the Superintendent for the benefit of the State Agency. All bars, fixtures, and property, other than liquors adjudged forfeited to the State under the provisions of this Act, shall be disposed of by the Superintendent in such

manner that they can not be again so unlawfully used.

, "Sec. 12. It shall be unlawful for the owner or owners of any real estate, building, structure or room to use, rent, lease or permit the same to be used for the purpose of violating any provision of this Act. Any person who shall willfully violate the provisions of this Section shall be guilty of a misdemeanor and in addition thereto shall be liable to a penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense, to be recovered at the suit of the state. The penalty so recovered shall become a lien on the property and premises so used, leased or rented in violation of this Act from and after the date of the filing of the suit to recover such penalty, and the filing of a notice of the pendency of such suit with the register of deeds of the county wherein said property is located and upon final judgment said property may be sold as upon execution to satisfy the same together with costs of suit: Provided, however, that such lien shall not attach to property under the control of any receiver, trustee, guardian, or administrator, but in such case the receiver, trustee, guardian or administrator shall be liable, on his official bond for the penalty so incurred, and in addition thereto shall be guilty of a misdemeanor. Each day such property is so used, leased or rented for any such unlawful purpose shall constitute a separate offense, and the penalty herein prescribed shall be recovered for each and every such day. All leases between landlords and tenants under which any tenant shall use the leased premises for the purpose of violating any provision of this Act, shall be wholly null and void, and the landlord may recover possession thereof as in forcible entry and detainer.

"Sec. 13. There shall be no property



rights of any kind whatsoever, in any liquors, vessels, appliances, fixtures, bars, furniture and implements kept or used for the purpose of violating any provision of this Act.

"Sec. 14. All places where liquors of any kind are manufactured, sold, bartered, given away or otherwise furnished in violation of any of the provisions of this Act, are hereby declared to be public nuisances and shall be abated in the manner provided by law at the suit of any citizen of the State.

"Sec. 15. No officer of this State, or of any county, city, town or municipal organization thereof, shall ever accept or receive, directly or indirectly, any property, money or thing of value, either for himself or for another, or for the State, county, city, town or municipal organization, for or in consideration of any agreement or understanding, express or implied, of any kind, character or nature whatsoever, that any person, individual or corporate, shall be permitted to violate any provisions of this Act, or shall because of the payment or delivery of any such money, property or thing or value, either by way of fine, license, permit or otherwise receive or secure immunity from arrest, prosecution or punishment therefor. Any such officer elective or appointive, violating any provisions of this Section shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the State penitentiary for not less than one year and one day nor more than five years.

"Sec. 16. Any person who shall, in any public place, or in or upon any passenger coach, street car, or in or upon any other vehicle commonly used for the transportation of passengers, or in or about any depot, platform, waiting station, or room drink any intoxicating liquor of any kind,

or if any person shall be drunk or intoxicated in any public or private road or in any passenger coach, street car or public place or building or at any public gathering, or if any person shall be drunk or intoxicated and shall disturb the peace of any person, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than Ten Dollars (\$10.00) nor more than One hundred dollars (\$100.00) or by imprisonment for not less than five days nor more than thirty days or by both such fine and imprisonment.

"Sec. 17. Every railroad conductor is hereby authorized and empowered to exercise, in any county of this State through which the train in charge of such conductor passes, all the common law and statutory powers of sheriffs in their respective counties for the purpose of enforcing the provisions of the last preceding section and to arrest offenders against any such provisions, and in so doing are acting for the State and not as employees of the railroad company. Arrests for offenses against any such provisions may be made by such conductor without warrant, and persons so arrested shall be delivered by him, to some justice of the peace, police judge, sheriff, constable or police officer at some station or place within the county in which the offense was committed, for trial as provided by law: Provided, that if the train shall have passed from the county in which such offense was committed, and for which such arrest shall have been made then said conductor shall deliver the person so arrested to some officer of another county, and he shall be held and delivered to some officer of the county in which the offense was committed and be there held for trial as provided by law: Provided, that any railroad conductor who is actually engaged in the

discharge of his duty, and makes a legal arrest under the provisions of this section, then and in that case the railroad company employing him shall not be liable for damages to the person or persons for such arrest.

"Sec. 18. It shall be unlawful for any person to whom any liquors, the sale of which is prohibited by this Act, shall be consigned, whether consigned to him in his own name, or in a fictitious name, to give any other person an order for any such liquors to any railroad company, express company, or other common carrier, or to any officer, agent, or employee of any railroad company, express company or common carrier with the intent and for the purpose to enable such other person to get or receive any such liquor for himself or for any other person or persons other than the consignee. Any person violating the provisions of this section shall be guilty of a misdemeanor.

"Sec. 19. It shall be the duty of the County Attorneys in their respective counties diligently to attend all inquisitions held under the provisions of this Act, and diligently to prosecute all violations of this Act, of which they may have or can obtain knowledge, and to bring all suits and actions for the recovery of fines, penalties and forfeitures provided for herein; and any county attorney neglecting or refusing to perform any duty required by the provisions of this Act may be removed from office as hereinafter provided.

"Sec. 19a. Any officer, agent or employee of the railroad company, express company, or other common carrier, who shall knowingly carry or deliver any liquors, the sale of which is prohibited by this Act, to or for any person to be sold, bartered, given away or otherwise furnished in violation of this Act, shall be guilty of a misdemeanor. Any such officer, agent or employee who shall

knowingly deliver any such liquors to any person other than the person to whom it is consigned and without a written order in each instance of the consignee thereof shall be guilty of a misdemeanor.

"Sec. 20. It shall be unlawful for any railroad or other common carrier, or agent thereof, or any other person, individual or corporate to ship, receive, transport, carry, handle or deliver any liquors the sale of which is prohibited by this Act under a false or fictitious name or title, and any person who shall knowingly violate any provisions of this section shall be deemed guilty of a misdemeanor and all liquors shipped under such fictitious name or title, or to a fictitious person, shall be forfeited to the State.

"Sec. 21. Every wife, child, parent, guardian, employer or other person who shall be injured in person or property, or means of support by any intoxicated person or in consequence of intoxication of any person, shall have a right of action for all damages actually sustained, in his or her own name against any person, individual or corporate, who shall by selling, bartering, giving away or otherwise furnishing intoxicating liquors, contrary to the provisions of this Act, have caused intoxication of such person. On the trial of any such suit, proof that the defendant or defendants sold, bartered, gave away or furnished any such liquors to such intoxicated person on the day, or about the time (and prior thereto) of such injury, shall be prima facie evidence that the liquor so sold, bartered, given away or otherwise furnished, caused such intoxication. In any action by a married woman, or other person legally entitled to recover damages for loss of support, caused by such intoxication, it shall only be necessary to prove that the defendant or defendants, has or have given, bar-

tered, sold or otherwise furnished intoxicating liquor of any kind to such person, during the period when such cause of action shall have accrued.

"Sec. 22. After the second conviction of any physician, apothecary, druggist, pharmacist, for violating any of the provisions of this Act, it shall be a part of the judgment of conviction that the license to practice medicine or pharmacy of such physician, druggist or pharmacist is revoked, and the court before whom such person shall be tried and convicted shall cause a certified copy of such judgment of conviction to be certified to the State Board having authority to issue such license.

"Sec. 23. All sheriffs, constables, marshals and police officers, and all county and city attorneys, shall diligently enforce all the provisions of this Act. If any such officer shall fail or refuse to do or perform any duty required by the provision of this Act, he shall be removed from office as herein provided. For the purpose of such removal a petition may be filed in the district court of the county wherein such officer resides, in the name of the state, on the relation of any citizen thereof, upon the recommendation of a grand jury, or on the relation of the board of county commissioners, or of any attorney appointed by the Governor under the provisions of this Act, Summons shall be issued and proceedings had therein to final judgment as in other civil cases; Provided, however, if an order is made suspending such officer from his office as hereinafter provided, he shall be entitled to demand and have trial within ten days, if the court be in session. If the court be not in session then the accused shall be entitled to demand and have a trial within the first ten days of the next term. A change of judge or a change of venue, shall be allowed as in other civil cases.

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Pending the trial of said cause, application may be made by the relator therein, or by any attorney appointed by the Governor under the provisions of this Act, to any judge of the Supreme Court or to the judge of the District Court wherein such cause is pending, for an order suspending said officer from his office during the pendency of said suit and, after reasonable notice to the defendant of such application and an opportunity to show cause, if any there be, in opposition thereto if it shall appear to the satisfaction of such judge that such officer has failed, neglected or refused to perform the duties required of him by law, then it shall be the duty of such judge to enter an order suspending such officer from office until final trial of the case, and in such order said judge shall appoint a proper person to hold such office and perform all the duties thereof during the suspension. Appeals shall be allowed in any such case as in other civil cases.

"Sec. 24. The Governor shall have power to appoint an attorney who shall have been a resident in this state for at least two years, and shall have been a lawyer licensed by some court of record for at least five years, who shall be known as Counsel to the Governor. He shall, under the direction of the Governor, assist in enforcing the provisions of this Act, and the other laws of the state, and shall perform such other duties as the Governor may, from time to time, require. He shall have all the power of county attorneys in their respective counties. He shall hold office during the pleasure of the Governor, and shall give bond, to be approved by him, conditioned for the faithful discharge of his duties, in the sum of Three Thousand Dollars (\$3000.00) and shall receive a salary to be fixed by the Governor of not more than Twenty-five Hundred Dollars (\$2,500.00) per annum,

payable monthly: Provided, that in lieu of, or in addition to, appointing such attorney, the Governor may call upon the Attorney General or his assistant to perform such service.

"Sec. 25. It shall be the duty of all sheriffs, deputy sheriffs, constables, mayors, marshals, police judges and police officers of any city or town having notice or knowledge of the violation of this Act, to notify the county attorney of the fact of any violation, and to furnish him with the names of any person within their knowledge by whom such violation can be proven. For the failure or neglect of official duty in the enforcement of this Act, any of the city or county officers herein mentioned may be removed from office as provided by law.

"Sec. 26. Whenever a violation of any provision of this Act is made a misdemeanor and the punishment is not prescribed, such punishment shall be a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) and by imprisonment of not less than thirty days nor more than six months.

"Sec. 27. The proceeds of all fines, penalties and forfeitures recovered under the provisions of this Act, if the suit or action is brought or prosecution instituted, by the Attorney appointed by the Governor, fifty per centum thereof shall be paid to the Superintendent for the benefit of the State Agency, and the remainder thereof to the road and bridge fund of the county; if brought by any officer or citizen of a county, the whole of the amount so recovered shall be paid into the road and bridge fund of the county.

"Sec. 28. For the purpose of carrying into effect the provisions of this Act there is hereby appropriated out of any money in the treasury not otherwise appropriated, the sum of Fifty Thousand Dollars (\$50,000.00)

or so much thereof as may be necessary: Provided, that the Superintendent shall report, under oath, to the next Legislature an itemized statement of the expenses and disbursements made under the provisions of this Act.

"Sec. 29. All acts and parts of acts in conflict herewith are hereby repealed.

"Sec. 30. For the preservation of the public peace, health and safety, an emergency is hereby declared to exist by reason whereof this Act shall take effect from and after its passage and approval: Provided, however, that Article One shall be referred by the Secretary of State to the people for their approval or rejection at the regular election to be held in the year 1908 in the manner provided by law, and, if a majority of all the electors voting at said election shall vote in favor thereof, then, said Article One shall thereby upon the official canvass and publication of the vote thereon become a part of the Constitution until otherwise provided by law, but, if a majority of all the electors voting thereon at said election shall vote against said Article One, the same shall thereby upon the official canvass and publication of the vote thereon be repealed: Provided, however, that that part of Section Five (5) Article One (1) of this Act, which provides that an agency for the sale of intoxicating liquors for lawful purposes may be established by the Superintendent, subject to the approval of the Governor in any incorporated town within this state of One Thousand population or more, or at any other place in this state where a public necessity exists therefor, shall not take effect or be in force prior to December 1st, 1908. In the event of such repeal the money and property in the possession of the Superin-



tendent and the local agents shall be disposed of for the benefit of the state as the Governor shall direct.

HENRY S. JOHNSTON,  
President Protempore of the Senate.

WM. H. MURRAY,  
Speaker of the House of Representatives.  
Approved March 24, A. D. 1908.

C. N. HASKELL,  
Governor of the State of Oklahoma.  
(SEAL.)

ATTEST:

BILL CROSS,  
Secretary of State."

That by the terms of said act it was provided by Section 2 thereof that the payment of the special tax required of liquor dealers by the United States by any person within this State, except the local agents of said State appointed by said Act, should constitute prima facie evidence of an intention to violate the provisions of said act. That by the terms of said Act, in Section 24 thereof, it was provided that the Governor of said State should have power to appoint an attorney to be known as Counsel to the Governor, who should, under the direction of the Governor, assist in enforcing the provisions of the act. That acting under the directions of the Governor, Honorable Fred S. Caldewll, duly appointed, qualified and acting as such Counsel to the Governor, did heretofore by written notice to the President and General Manager and duly authorized agents of said defendants in writing notify each and all of said defend-

ants of the provisions of said Act of Congress of June 16, 1908, and of the provisions of the Constitution of the State of Oklahoma with reference to the prohibition of the manufacture, sale, barter, giving away or otherwise furnishing intoxicating liquors in said State, and of the provisions of Sections one, two, three, four, five, six, fourteen, nineteen A, twenty, twenty-four of Article 3 of said Chapter 69 of the Session Laws of 1907-1908, and of the persons named in said list heretofore set out herein, who had made payment of the special tax required of liquor dealers by the United States. And each and all of said defendants before the bringing of this action, were duly notified in writing, as stated, that the persons, companies, corporations and associations whose names appeared on the said list were persons with the State of Oklahoma who had paid the said special tax required of liquor dealers by the United States. And that the State of Oklahoma under and by virtue of said Act of Congress, its said Constitution and said laws in said State, would hold all shipments made by each of the defendants whereby either of them undertook to receive at points without the State of Oklahoma intoxicating liquors of any kind, and to transport, carry or otherwise convey such liquors or compounds to or to the order of any of the persons, companies, corporations, firms or associations named in said list, as illegal, contrary to good morals,

against the public policy and in direct violation of the positive laws of the State of Oklahoma. That the importation of any prohibited intoxicating liquors to or to the order of any of said persons by either or any of said defendants was and is a public nuisance within the State of Oklahoma, and were not importations in good faith, intended for the use of the importer and consignee, and not for sale within the State; and that all shipments or deliveries made by defendants by interstate shipment to any or all of the persons named in said list were intended for and were for the violation of the laws of the State of Oklahoma and to commit a public nuisance in said State, That the State of Oklahoma thereby was not undertaking to object or restrict the defendants in the importation of intoxicating liquors, by interstate shipment to any person in said State outside of what was formerly the Indian Territory, the Osage Indian Reservation and an Indian Reservation, January 1st, 1906, intending it for his own use and not for sale in said State, but that under the law of said State each and all of said persons intended to use all the liquor in their possession to sell the same in said State in violation of its laws, and that any delivery of prohibited intoxicating liquors to any of said persons would have the necessary effect of aiding such consignee to violate the laws of the State of Oklahoma

and would be a public nuisance and injury to the said State.

That in addition thereto under the terms of said Chapter 69 of the Session Laws of 1907-1908, of Oklahoma, as therein provided, the State of Oklahoma for the benefit of its citizens undertook to furnish intoxicating liquor to all persons in said State whenever a sale of the same was by the law authorized, for reason of necessary use of the same for preservation, or health, or like purposes, and that under the law of the State of Oklahoma, the State of Oklahoma was the sole and only person authorized to sell liquors in said State. That the state is pecuniarily interested in the sale of said liquors and irreparably injured by said importation by defendants to the persons named in said list who had paid the special tax required by the United States of liquor dealers, in that the said importation to the said persons named on said list, being for the purpose of a resale of such importations in said State, operated to the injury to the exclusive right to the sale of intoxicating liquors in said State claimed and exercised by the State of Oklahoma. That since the 16th of November, 1907, after the said notices were received by the said defendants and up to this time, the said defendants have continuously and continually, each and all of them, imported to and to the order of each firm and all of the persons named in said list as having

paid a special tax as required by the United States of liquor dealers. And the said persons named in said list have continued continuously to resell said intoxicating liquors so imported by the defendants; that the said resale has at all times been in violation of the law of the State of Oklahoma and has been a cause of enormous expense and irreparable injury to the State of Oklahoma and the inhabitants thereof, and each and all of the counties and other municipalities therein, in that the enforcement of the laws against the sale of intoxicating liquors is extremely difficult, expensive and exhausting, and that the importation and furnishing to said persons named in said list by said defendants of such intoxicating liquors with the intent that the same shall be used for resale in the said State has caused a large imposition of expenses upon said State and a violation of its laws and a constant source of friction and corruption in its government and is against the peace and dignity of the Government of said State, and totally against the public policy thereof and good morals therein, and is a public nuisance in said State; and that the defendants in violation of law and in injury to the rights of the State and inhabitants thereof, have openly, persistently and continuously imported intoxicating liquors, whose manufacture, sale, barter, or furnishing is prohibited by the laws of the State of Oklahoma to each and all of the persons named

in said list by furnishing, carrying and conveying the same to and to the order of each and all of the said persons named in said list on divers and sundry occasions continuously, and that defendants threaten to continue in the said violation unless restrained, and in continuing so to do said defendants, and each of them, have committed acts which amount to a surrender and an abandonment of their corporate right to do business in interstate commerce in the carriage of intoxicating liquors, and for the same the plaintiff has no adequate remedy according to the course of the common law for the reason that said shipments originate outside of the State.

WHEREFORE, the plaintiff asks that the defendants and each of them may be enjoined and restrained from further introducing, conveying and furnishing intoxicating liquors, including ale, wine and beer in any form, at any place, at any time and in any manner in said State of Oklahoma within the limits of what was formerly the Indian Territory, including the Osage Reservation, and that any other parts of said State which existed as Indian Reservations on the first day of January, 1906; and further be enjoined and restrained from carrying, conveying, delivering

and furnishing intoxicating liquors, including ale, wine and beer, in any form and in any place, at any time and in any manner, in said State, to any or all of the persons named in the said list as being persons who have paid the special tax required by the United States of liquor dealers; and that in default of obedience of said defendants to the order of injunction prayed for, that their corporate rights to do a business in interstate commerce with persons in said State be forfeited, and for the costs of this action and such other relief as the equity of the case may warrant, and plaintiff will ever pray.

CHARLES WEST,

Attorney General of the State of Oklahoma.

E. G. SPPILMAN,

As't Atty. General, of Counsel.

COUNTY OF LOGAN,

State of Oklahoma, ss.

Charles West being first duly sworn says, upon oath, that he is the Attorney General of the State of Oklahoma, and was such at all of the times named herein since the 16th day of November, 1907; that he has read the foregoing bill and has made inquiry of persons likely to know the truth of the same and believes the facts stated therein are true.

CHARLES WEST.

Subscribed and sworn to before me this 29th  
day of April, 1910.

JULIET WRIGHT

Notary Public.

(SEAL.)

My Commission expires December 19, 1911.



Office Supreme Court, U. S.

FILED.

OCT 11 1910

JAMES H. McKENNEY,

CLERK.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1910.

No. 14

Original.

THE STATE OF OKLAHOMA,

*Plaintiff,*

*vs.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY;  
GULF, COLORADO AND SANTA FE RAILWAY COMPANY; ST.  
LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY;  
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE  
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; FT.  
SMITH & WESTERN RAILROAD COMPANY; THE CHICAGO,  
ROCK ISLAND & PACIFIC RAILWAY COMPANY; AMERICAN  
EXPRESS COMPANY; PACIFIC EXPRESS COMPANY, AND THE  
WELLS FARGO EXPRESS COMPANY,

*Defendants.*

**SEPARATE DEMURRER OF THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY AND GULF, COLORADO AND SANTA FE RAIL-  
WAY COMPANY AND MOTION FOR LEAVE TO FILE THE SAME.**

ROBERT DUNLAP,

*Solicitor for The Atchison, Topeka &  
Santa Fe Railway Company and  
Gulf, Colorado and Santa Fe Rail-  
way Company, Defendants.*

GARDINER LATHROP,

A. B. BROWNE,

*Of Counsel.*



IN THE SUPREME COURT OF THE UNITED STATES.

No. 14, Original.

THE STATE OF OKLAHOMA,  
*Plaintiff,*  
*vs.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY;  
GULF, COLORADO AND SANTA FE RAILWAY COMPANY; ST.  
LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY;  
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE  
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; FT.  
SMITH & WESTERN RAILROAD COMPANY; THE CHICAGO,  
ROCK ISLAND & PACIFIC RAILWAY COMPANY; AMERICAN  
EXPRESS COMPANY; PACIFIC EXPRESS COMPANY, AND THE  
WELLS FARGO EXPRESS COMPANY,

*Defendants.*

DEMURRER.

THE SEPARATE DEMURRER OF THE ABOVE NAMED DEFENDANTS,  
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
AND GULF, COLORADO AND SANTA FE RAILWAY COMPANY, TO  
THE BILL OF COMPLAINT OF THE ABOVE NAMED PLAINTIFF.

These defendants, The Atchison, Topeka and Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and al-

leged, do demur thereto and for cause of demurrer sheweth that the said plaintiff has not in and by the said bill made or stated any such cause as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against these defendants.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants, respectively, demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill; and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

ROBERT DUNLAP,

*Solicitor for the Atchison, Topeka &  
Santa Fe Railway Company and Gulf,  
Colorado & Santa Fe Railway Com-  
pany.*

GARDINER LATHROP,

A. B. BROWNE,

*Of Counsel.*

STATE OF ILLINOIS, }  
 COUNTY OF COOK. } ss.

E. P. Ripley makes solemn oath and says that he is the President of The Atchison, Topeka and Santa Fe Railway Company and of Gulf, Colorado and Santa Fe Railway Company, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

E. P. RIPLEY.

Subscribed and sworn to before me this 6th day of September, 1910.

AGNES K. DONOHUE,

[NOTARIAL SEAL] *Notary Public for Cook County, Illinois.*

My commission expires May 22, 1911.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

GARDINER LATHROP,  
*Of Counsel for Defendants.*

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, 1910.

No. 14, Original.

THE STATE OF OKLAHOMA,

*Plaintiff,*

*vs.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY;  
GULF, COLORADO AND SANTA FE RAILWAY COMPANY; ST.  
LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY;  
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE  
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; FT.  
SMITH & WESTERN RAILROAD COMPANY; THE CHICAGO,  
ROCK ISLAND & PACIFIC RAILWAY COMPANY; AMERICAN  
EXPRESS COMPANY; PACIFIC EXPRESS COMPANY, AND THE  
WELLS FARGO EXPRESS COMPANY,

*Defendants.*

SEPARATE MOTION OF THE ABOVE NAMED DEFENDANTS, THE  
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, AND  
GULF, COLORADO AND SANTA FE RAILWAY COMPANY, FOR  
LEAVE TO FILE THEIR SEPARATE DEMURRER TO THE BILL OF  
COMPLAINT OF THE ABOVE NAMED COMPLAINANT AND TO  
HAVE SUCH DEMURRER SET DOWN FOR ARGUMENT.

*To the Honorable, the Judges of the Supreme Court of  
the United States of America:*

The Atchison, Topeka and Santa Fe Railway Company  
and Gulf, Colorado and Santa Fe Railway Company, as  
defendants to the original bill of complaint filed by the

State of Oklahoma, hereby pray leave, in accordance with the practice of this court in such cases, to file their demurrer hereinbefore set forth to said bill of complaint, and pray that the same may be set down for argument at an early day as may suit the convenience of this court.

ROBERT DUNLAP,

*Solicitor for Defendants.*

GARDINER LATHROP,

A. B. BROWNE,

*Of Counsel.*





Office Supreme Court, U. S.  
FILED.

OCT 11 1910

JAMES H. MURPHY,

CLERK.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1910.

**No. 14**  
Original.

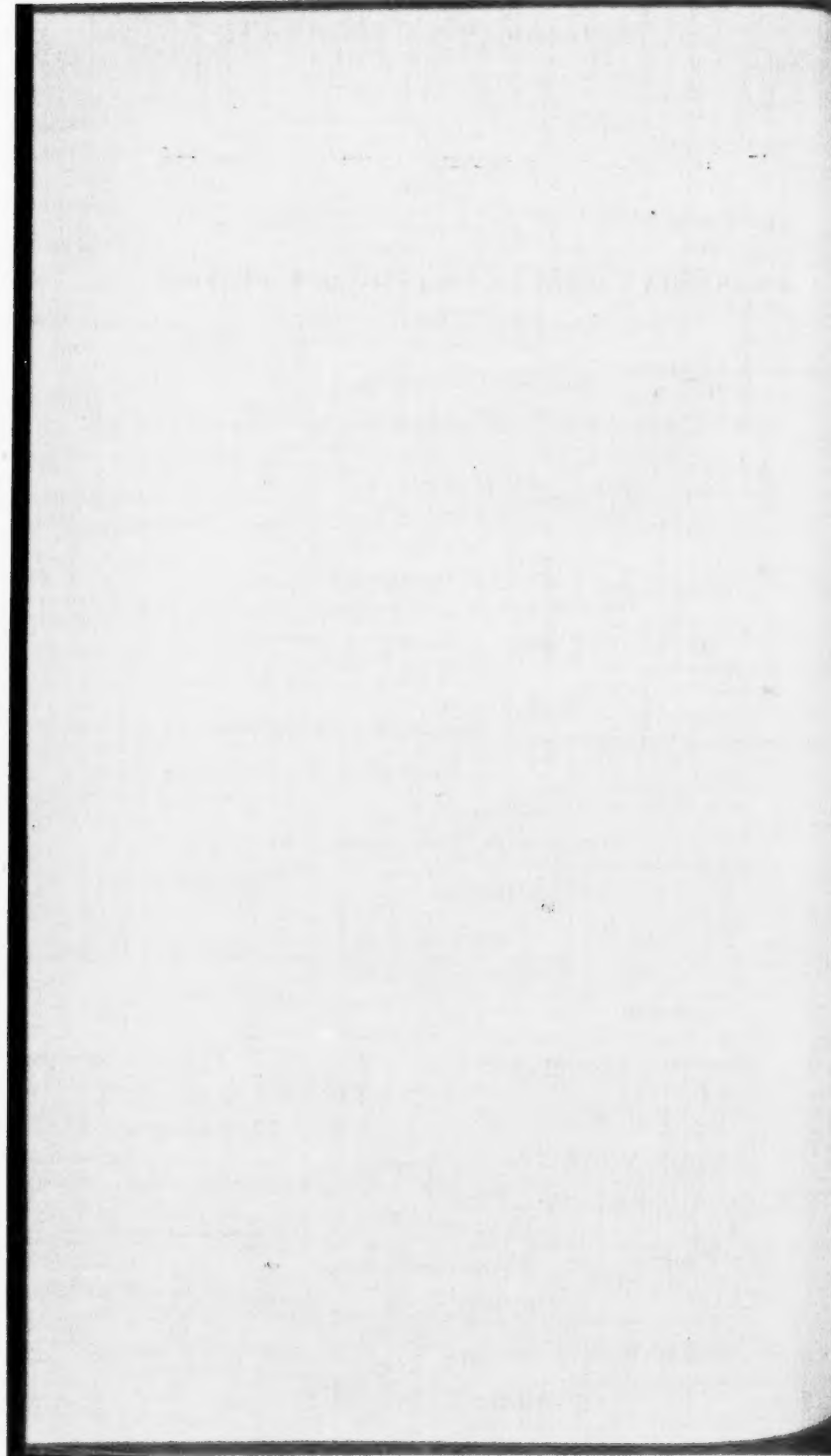
THE STATE OF OKLAHOMA,  
*Plaintiff,*

*vs.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; GULF, COLORADO AND SANTA FE RAILWAY COMPANY; ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; FT. SMITH & WESTERN RAILROAD COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; AMERICAN EXPRESS COMPANY; PACIFIC EXPRESS COMPANY, AND THE WELLS FARGO EXPRESS COMPANY,  
*Defendants.*

Separate Demurrer of The St. Louis, Iron Mountain & Southern Railway Company and Motion for Leave to File the Same.

MARTIN L. CLARDY,  
*Solicitor for The St. Louis, Iron  
Mountain & Southern Railway  
Company, Defendant.*



IN THE

# Supreme Court of the United States.

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OCTOBER TERM, 1910.

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**No. 14**  
**Original.**

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THE STATE OF OKLAHOMA,  
*Plaintiff,*  
*vs.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; GULF, COLORADO AND SANTA FE RAILWAY COMPANY; ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; FT. SMITH & WESTERN RAILROAD COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; AMERICAN EXPRESS COMPANY; PACIFIC EXPRESS COMPANY, AND THE WELLS FARGO EXPRESS COMPANY,  
*Defendants.*

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## DEMURRER.

THE SEPARATE DEMURRER OF THE ABOVE NAMED DEFENDANT, THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, TO THE BILL OF COMPLAINT OF THE ABOVE NAMED PLAINTIFF.

This defendant, the St. Louis, Iron Mountain & Southern Railway Company, by protestation, not confessing or acknowledging all or any of the matters or

things in the said bill of **complaint** contained to be true in such manner and form as the same are therein set **forth and alleged, does demur thereto and for cause of** demurrer sheweth that the said plaintiff has not in and by the said bill made or stated any such cause as doth or ought to **entitle it to any such** discovery or relief as is thereby sought and prayed for from or against this defendant.

Wherefore, and for **divers** other good causes of demurrer appearing in **the said bill**, this defendant demurs thereto and humbly demands the judgment of this court whether it shall be compelled to make any further or other **answer to the said bill**; and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

MARTIN L. CLARDY,  
*Solicitor for the St. Louis, Iron  
Mountain & Southern Railway  
Company.*

STATE OF MISSOURI, }  
CITY OF ST. LOUIS. } ss.

C. S. Clarke makes solemn oath and says that he is the First Vice-President of The St. Louis, Iron Mountain & Southern Railway Company, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

C. S. CLARKE.

Subscribed and sworn to before me this 20th day of September, 1910.

GEORGE C. DONOVAN,

[NOTARIAL SEAL]

*Notary Public, City of St. Louis.*

My commission expires Nov. 9, 1911.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

MARTIN L. CLARDY,

*Counsel for Defendant.*

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1910.

No. 14, Original.

THE STATE OF OKLAHOMA,  
*Plaintiff,*  
*vs.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; GULF, COLORADO AND SANTA FE RAILWAY COMPANY; ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; FT. SMITH & WESTERN RAILROAD COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; AMERICAN EXPRESS COMPANY; PACIFIC EXPRESS COMPANY, AND THE WELLS FARGO EXPRESS COMPANY,  
*Defendants.*

SEPARATE MOTION OF THE ABOVE NAMED DEFENDANT, THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, FOR LEAVE TO FILE ITS SEPARATE DEMURRER TO THE BILL OF COMPLAINT OF THE ABOVE NAMED COMPLAINANT AND TO HAVE SUCH DEMURRER SET DOWN FOR ARGUMENT.

*To the Honorable, the Judges of the Supreme Court of the United States of America:*

The St. Louis, Iron Mountain & Southern Railway Company, as defendant to the original bill of complaint filed by the State of Oklahoma, hereby prays leave, in accordance with the practice of this court in such cases, to file its demurrer hereinbefore set forth

to said bill of complaint, and prays that the same may be set down for argument at as early a day as may suit the convenience of this court.

MARTIN L. CLARDY,  
*Solicitor for Defendant St. Louis,  
Iron Mountain & Southern Rail-  
way Company.*





OCT 11 1910

JAMES H. McJANNET,

IN THE  
Supreme Court of the United States

THE STATE OF OKLAHOMA,  
*Plaintiff,*

vs.

THE ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY;  
GULF, COLORADO & SANTA FE  
RAILWAY COMPANY; ST. LOUIS,  
IRON MOUNTAIN & SOUTHERN  
RAILWAY COMPANY; ST. LOUIS  
& SAN FRANCISCO RAILROAD  
COMPANY; THE MISSOURI, KAN-  
SAS & TEXAS RAILWAY COM-  
PANY; FT. SMITH & WESTERN  
RAILROAD COMPANY; THE CHI-  
CAGO, ROCK ISLAND & PACIFIC  
RAILWAY COMPANY; AMERICAN  
EXPRESS COMPANY; PACIFIC  
EXPRESS COMPANY; AND THE  
WELLS FARGO EXPRESS COM-  
PANY.

*Defendants.*

No. 14, Original.

W. F. EVANS,  
*Solicitor for the St. Louis & San  
Francisco Railroad Company.*

C. C. CALHOUN,  
*Of Counsel.*

IN THE  
**Supreme Court of the United States**

THE STATE OF OKLAHOMA,  
*Plaintiff,*  
v.s.

THE ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY;  
GULF, COLORADO & SANTA FE  
RAILWAY COMPANY; ST. LOUIS,  
IRON MOUNTAIN & SOUTHERN  
RAILWAY COMPANY; ST. LOUIS  
& SAN FRANCISCO RAILROAD  
COMPANY; THE MISSOURI, KAN-  
SAS & TEXAS RAILWAY COM-  
PANY; FT. SMITH & WESTERN  
RAILROAD COMPANY; THE CHI-  
CAGO, ROCK ISLAND & PACIFIC  
RAILWAY COMPANY; AMERICAN  
EXPRESS COMPANY; PACIFIC  
EXPRESS COMPANY, AND THE  
WELLS FARGO EXPRESS COM-  
PANY,

*Defendants.*

No. 14, Original.

Now comes defendant, the St. Louis & San Francisco Railroad Company, and respectfully prays leave to file its demurrer to the bill of complaint of the above named plaintiff herein, copy of which demurrer is hereto attached.

W. F. EVANS,  
*Solicitor for the St. Louis & San  
Francisco Railroad Company.*

C. C. CALHOUN,  
*Of Counsel.*

IN THE  
SUPREME COURT OF THE UNITED STATES.

THE STATE OF OKLAHOMA,  
*Plaintiff,*  
*vs.*

THE ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY;  
GULF, COLORADO & SANTA FE  
RAILWAY COMPANY; ST. LOUIS,  
IRON MOUNTAIN & SOUTHERN  
RAILWAY COMPANY; ST. LOUIS  
& SAN FRANCISCO RAILROAD  
COMPANY; THE MISSOURI, KAN-  
SAS & TEXAS RAILWAY COM-  
PANY; FT. SMITH & WESTERN  
RAILROAD COMPANY; THE CHI-  
CAGO, ROCK ISLAND & PACIFIC  
RAILWAY COMPANY; AMERICAN  
EXPRESS COMPANY; PACIFIC  
EXPRESS COMPANY, AND THE  
WELLS FARGO EXPRESS COM-  
PANY,

*Defendants.*

No. 14, Original.

DEMURRER.

THE SEPARATE DEMURRER OF THE ABOVE NAMED DE-  
FENDANT, ST. LOUIS & SAN FRANCISCO RAILROAD  
COMPANY, TO THE BILL OF COMPLAINT OF  
THE ABOVE NAMED PLAINTIFF.

This defendant, the St. Louis & San Francisco Railroad Company, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form

as the same are therein set forth and alleged, doth demur thereto and for cause of demurrer sheweth that the said plaintiff has not in and by the said bill made or stated any such cause as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto and humbly demands the judgment of this Court whether it shall be compelled to make any further or other answer to the said bill; and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

W. F. EVANS,

*Solicitor for the St. Louis & San  
Francisco Railroad Company.*

C. C. CALHOUN,  
*Of Counsel.*

STATE OF MISSOURI, }  
CITY OF ST. LOUIS, } ss.

W. F. EVANS makes solemn oath and says that he is the General Counsel of the St. Louis & San Francisco Railroad Company, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

W. F. EVANS.

Subscribed and sworn to before me this 1st day of October, 1910.

KATE L. WORLEY,

(Seal.)

*Notary Public.*

My Commission Expires Nov. 22, 1911.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

C. C. CALHOUN,  
*Of Counsel for Defendant.*

IN THE  
**Supreme Court of the United States.**

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THE STATE OF OKLAHOMA,

Complainant,

vs.

ATCHISON, TOPEKA, & SANTA FE RAILWAY  
COMPANY, ST. LOUIS, IRON MOUNTAIN &  
SOUTHERN RAILWAY COMPANY, ST. LOUIS  
& SAN FRANCISCO RAILROAD COMPANY,  
MISSOURI, KANSAS & TEXAS RAILWAY COM-  
PANY, KANSAS CITY SOUTHERN RAILWAY  
COMPANY, FT. SMITH & WESTERN RAILROAD  
COMPANY, THE CHICAGO, ROCK ISLAND &  
PACIFIC RAILWAY COMPANY, 'AMERICAN  
EXPRESS COMPANY, PACIFIC EXPRESS COM-  
PANY AND THE WELLS-FARGO EXPRESS  
COMPANY,

Defendants.

No. 14  
Original.

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**THE DEMURRER OF THE ABOVE NAMED  
DEFENDANT, MISSOURI, KANSAS &  
TEXAS RAILWAY COMPANY, TO THE  
BILL OF COMPLAINT OF THE ABOVE  
NAMED COMPLAINANT.**

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This defendant, by protestation, not confessing or acknowl-  
edging all or any of the matters or things in the said bill  
of complaint contained to be true in such manner and

form as the same are therein set forth and alleged, demurs to the said bill, and for causes of demurrer shows:

I.

It appears by the complainant's own showing in said bill that it is not entitled to the relief prayed by the bill against this defendant.

II.

It appears by the said bill that there are divers other persons who are necessary parties to said bill, but who are not made parties thereto, and in particular it appears that by this bill it is sought to determine and settle the rights not alone of the parties made defendants to this bill, but of the various parties named in the body of the bill and who are not made parties thereto, but whose rights are materially involved in the subject of the bill, and that complete justice cannot be done unless said other parties so named in said bill be made parties thereto, that they are necessary parties defendant and, if joined, this Court would have no jurisdiction of the bill.

III.

Said bill is exhibited against this defendant and against the several other defendants in said bill for several and distinct and independent matters and causes which have no relation to each other, and in which or in the greater part of which this defendant is in no way interested or concerned and ought not to be implicated.

IV.

Said bill does not involve any controversy of a civil nature as against this defendant.

V.

By said bill and in this suit the said complainant, the State of Oklahoma, is seeking to enforce its penal laws.

Wherefore, and for divers other good causes of demurrer to said bill, this defendant demurs thereto and humbly demands the judgment of this Court whether it shall be compelled to make any further or other answer to said bill, and prays to be hence dismissed with its costs and charges in the matter most wrongfully sustained.

.....,  
Solicitors for the Missouri, Kansas & Texas  
Railway Company.

.....,  
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

.....,  
Of Counsel for Defendant, Missouri, Kan-  
sas & Texas Railway Company.

State of Missouri, }  
City of St. Louis. } ss.

..... makes solemn oath that he  
is.....of the above named defendant,  
Missouri, Kansas & Texas Railway Company, and that the  
foregoing demurrer is not interposed for delay, and that  
the same is true in point of fact.

.....  
Subscribed and sworn to before me, this ..... day of  
....., 1910.

.....  
Notary Public, City of St. Louis, Mo.





Office Supreme Court, U. S.  
**FILED.**

OCT 11 1910

JAMES H. McKENNEY,  
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

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**No. 14, Original.**

THE STATE OF OKLAHOMA, PLAINTIFF,

*vs.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, GULF, COLORADO & SANTA FE RAILWAY COMPANY, ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, FT. SMITH & WESTERN RAILROAD COMPANY, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, AMERICAN EXPRESS COMPANY, PACIFIC EXPRESS COMPANY, AND THE WELLS-FARGO EXPRESS COMPANY, DEFENDANTS.

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**DEMURRER.**

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**The Separate Demurrer of the Kansas City Southern Railway Company to the Bill of Complaint of the Above-named Plaintiff.**

This defendant, The Kansas City Southern Railway Company, by protestation, not confessing or acknowledging all

or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto and for cause of demurrer sheweth that the said plaintiff has not in and by the said bill made or stated any such cause as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether it shall be compelled to make any further or other answer to the said bill; and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

SAMUEL W. MOORE,  
ALDIS B. BROWNE,  
ALEXANDER BRITTON,  
*Solicitors for the Kansas City  
Southern Railway Company.*

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STATE OF MISSOURI,  
*County of Jackson, ss:*

J. F. Holden makes solemn oath and says that he is the vice-president of The Kansas City Southern Railway Company in charge of traffic; that this affidavit is made by him in behalf of said company in the absence of its president; that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

J. F. HOLDEN.

Subscribed and sworn to before me this 20th day of September, 1910.

[SEAL.]

CLARENCE R. HALL,  
*Notary Public for Jackson County, Missouri.*

My commission expires October 15th, 1912.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

SAMUEL W. MOORE,  
*Of Counsel for Defendant.*



FILED  
OCT 31 1910

JAMES H. McKENNEY,

— IN THE —  
**SUPREME COURT**  
— OF THE —  
**UNITED STATES**

THE STATE OF OKLAHOMA

*Plaintiff*

vs.

ATCHISON, TOPEKA & SANTA  
FE RAILWAY COMPANY,  
ET AL, - - -

*Defendants*

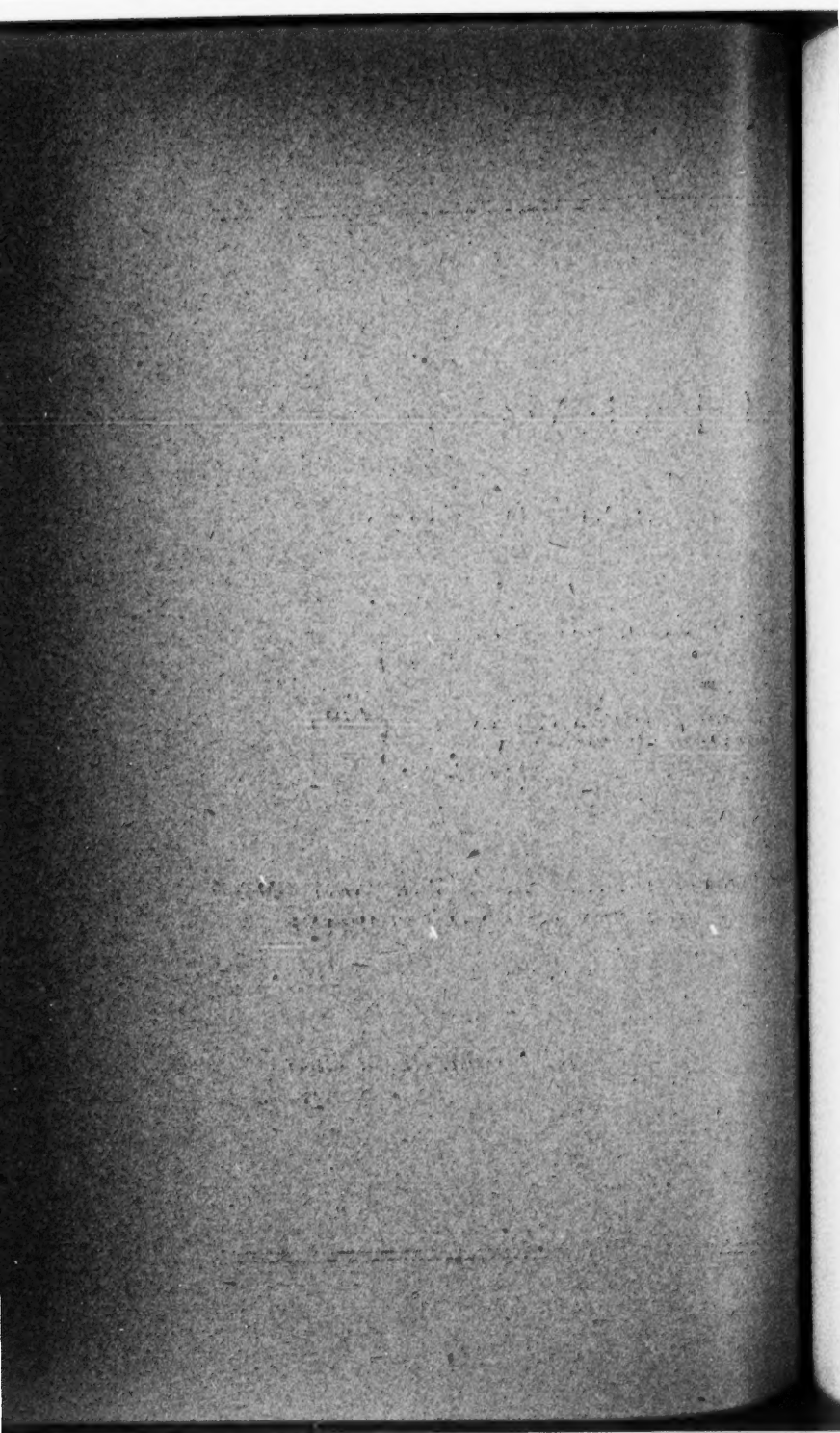
No. 14

ORIG.

SEPARATE DEMURRER OF THE FORT SMITH  
& WESTERN RAILROAD COMPANY

CHARLES E. WARNER

*Solicitor for Defendant*



— IN THE —  
SUPREME COURT  
— OF THE —  
UNITED STATES

---

*The State of Oklahoma,*                      *Plaintiff*

*vs.*

*Atchison, Topeka & Santa Fe Railway  
Company; Gulf, Colorado & Santa Fe  
Railway Company; St. Louis, Iron  
Mountain & Southern Railway Com-  
pany; St. Louis & San Francisco  
Railroad Company; The Missouri,  
Kansas & Texas Railway Company;  
Kansas City Southern Railway Com-  
pany; Fort Smith & Western Railroad  
Company; The Chicago, Rock Island  
& Pacific Railway Company; American  
Express Company; Pacific Express  
Company and the Wells Fargo Express  
Company,*

*Defendants*

No. 14  
ORIG.

*To the Honorable Judges of the Supreme  
Court of the United States:*

The separate demurrer of the above named defend-  
ant, Fort Smith & Western Railroad Company, to the  
bill of complaint of the above named plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true in such manner and form as the same are therein set forth and alleged, demurs to the said bill.

And for cause of demurrer shows:

I. That it appears by the plaintiff's own showing by the said bill, that it is not entitled to the relief prayed by said bill, against this defendant.

II. That it appears from said bill of complaint of plaintiff that this court has no jurisdiction to hear and determine this action.

III. That said bill of complaint of plaintiff is wholly without equity.

WHEREFORE, and for divers other good causes of demurrer appearing in said bill, this defendant demurs thereto, and it prays the judgment of this Honorable Court whether it shall be compelled to make further or any answer to the said bill; and it humbly prays to be hence dismissed with its reasonable costs in its behalf sustained.

CHARLES E. WARNER,  
Solicitor for Defendant, Fort Smith  
& Western Railroad Company.



STATE OF ARKANSAS }  
COUNTY OF SEBASTIAN } ss.

Charles E. Warner, being first duly sworn, on oath says:

That he is the Solicitor for the defendant, the Fort Smith & Western Railroad Company, in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point of law, and on behalf of the defendant says that the same is not interposed for delay.

CHARLES E. WARNER.

Subscribed and sworn to before me this 13th day of October, 1910.

JAMES BRIZZOLARA,

[SEAL]

Notary Public.

My Commission expires January 18, 1914.

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SEI

Supreme Court, U. S.  
FILED.

OCT 11 1910

JAMES H. MCKENNEY,

CLERK.

IN THE  
Supreme Court of the United States

OCTOBER TERM, 1910.

No. 14

Original.

THE STATE OF OKLAHOMA,  
*Plaintiff,*  
*vs.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY;  
GULF, COLORADO AND SANTA FE RAILWAY COMPANY; ST.  
LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COM-  
PANY; ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY;  
THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY;  
FT. SMITH & WESTERN RAILROAD COMPANY; THE CHI-  
CAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY;  
AMERICAN EXPRESS COMPANY; PACIFIC EXPRESS COM-  
PANY, AND THE WELLS FARGO EXPRESS COMPANY,

*Defendants.*

**STATE DEMURRER OF THE CHICAGO, ROCK ISLAND AND  
PACIFIC RAILWAY COMPANY AND MOTION FOR LEAVE TO  
FILE THE SAME.**

M. L. BELL,  
*Solicitor for The Chicago, Rock  
Island and Pacific Railway Com-  
pany, Defendant.*

B. PEIRCE,  
*Of Counsel.*



IN THE SUPREME COURT OF THE UNITED STATES.

No. 14, Original.

THE STATE OF OKLAHOMA,  
*Plaintiff,*  
*vs.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; GULF, COLORADO AND SANTA FE RAILWAY COMPANY; ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; FT. SMITH & WESTERN RAILROAD COMPANY; THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY; AMERICAN EXPRESS COMPANY; PACIFIC EXPRESS COMPANY, AND THE WELLS FARGO EXPRESS COMPANY,  
*Defendants.*

DEMURRER.

THE SEPARATE DEMURRER OF THE ABOVE NAMED DEFENDANT, THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, TO THE BILL OF COMPLAINT OF THE ABOVE NAMED PLAINTIFF.

This defendant, The Chicago, Rock Island and Pacific Railway Company, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto and for cause of demurrer sheweth that the said plaintiff has not in and by the said bill made or stated any such cause as doth or ought to entitle it to any

such discovery or relief as is thereby sought and prayed for from or against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether it shall be compelled to make any further or other answer to the said bill; and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

M. L. BELL,  
*Solicitor for The Chicago, Rock  
Island and Pacific Railway Com-  
pany.*

E. B. PEIRCE,  
*Of Counsel.*

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

H. U. Mudge makes solemn oath and says that he is the President of The Chicago, Rock Island and Pacific Railway Company, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

H. U. MUDGE.

Subscribed and sworn to before me this 4th day of October, 1910.

CHARLES T. SCHWARZ,  
(SEAL) *Notary Public for Cook County, Illinois.*

My commission expires May 30, 1912.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

E. B. PEIRCE,  
*Of Counsel for Defendant.*

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 14, Original.

THE STATE OF OKLAHOMA,  
*Plaintiff,*  
*vs.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; GULF, COLORADO AND SANTA FE RAILWAY COMPANY; ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; FT. SMITH & WESTERN RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY; AMERICAN EXPRESS COMPANY; PACIFIC EXPRESS COMPANY, AND THE WELLS FARGO EXPRESS COMPANY,  
*Defendants.*

SEPARATE MOTION OF THE ABOVE NAMED DEFENDANT, THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, FOR LEAVE TO FILE ITS SEPARATE DEMURRER TO THE BILL OF COMPLAINT OF THE ABOVE NAMED COMPLAINANT AND TO HAVE SUCH DEMURRER SET DOWN FOR ARGUMENT.

*To the Honorable, the Judges of the Supreme Court of the United States of America:*

The Chicago, Rock Island and Pacific Railway Company, as defendant to the original bill of complaint filed by the State of Oklahoma, hereby prays leave, in accordance with the practice of this court in such cases, to file its demurrer hereinbefore set forth to said bill of com-



plaint, and prays that the same may be set down for argument at an early day as may suit the convenience of this court.

M. L. BELL,  
*Solicitor for Defendant.*

E. B. PEIRCE,  
*Of Counsel.*



OCT 11 1910

JAMES H. McKENNEY,

CLERK.

IN THE

**Supreme Court of the United States.**

THE STATE OF OKLAHOMA,  
Plaintiff,  
vs.

THE ATCHISON, TOPEKA & SANTA  
FE RAILWAY COMPANY, GULF,  
COLORADO & SANTA FE RAIL-  
WAY COMPANY, ST. LOUIS,  
IRON MOUNTAIN & SOUTHERN  
RAILWAY COMPANY, ST. LOUIS  
& SAN FRANCISCO RAILROAD  
COMPANY, THE MISSOURI, KAN-  
SAS & TEXAS RAILWAY COM-  
PANY, FT. SMITH & WESTERN  
RAILROAD COMPANY, THE CHI-  
CAGO, ROCK ISLAND & PACIFIC  
RAILWAY COMPANY, AMER-  
ICAN EXPRESS COMPANY, PA-  
CIFIC EXPRESS COMPANY and  
THE WELLS FARGO EXPRESS  
COMPANY,  
Defendants.

No. 14,  
Original.

DEMURRER.

**Separate Demurrer of the above  
named Defendant AMERICAN EX-  
PRESS COMPANY to the Bill of  
Complaint of the above named  
Plaintiff.**

This defendant, the AMERICAN EXPRESS COMPANY,  
by protestation, not confessing or acknowledging  
all or any of the matters or things in said bill of  
complaint contained to be true in such manner and  
form as the same are therein set forth and alleged,

doth demur thereto, and for cause of demurrer sheweth that the said plaintiff has not in and by said bill made or stated any such cause as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

WHEREFORE, and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto, and humbly demands the judgment of this Court whether it shall be compelled to make any further or other answer to said bill; and prays to be hence dismissed, with its costs and charges in this behalf most wrongfully sustained.

CARTER, LEDYARD & MILBURN,  
T. B. HARRISON, Jr.,  
Solicitors for American Express Co.

STATE OF NEW YORK, }  
County of New York. } ss.:

JOHN H. BRADLEY, makes solemn oath and says that he is the Vice-President and General Traffic Manager of the AMERICAN EXPRESS COMPANY, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

JOHN H. BRADLEY.

Subscribed and sworn to before }  
me this 27th day of September, }  
ber, A. D. 1910.

M. U. OVERLAND,  
[SEAL.] Notary Public, New York County.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

T. B. HARRISON, Jr.,  
Of Counsel for Defendant American  
Express Company.





OCT 11 1910

JAMES H. McKENNEY,

CLERK.

IN THE

**Supreme Court of the United States.**

THE STATE OF OKLAHOMA,  
Plaintiff,

VS.

No. 14,  
Original.

THE ATCHISON, TOPEKA & SANTA FE  
RAILWAY COMPANY; GULF, COLO-  
RADO & SANTA FE RAILWAY COM-  
PANY; ST. LOUIS, IRON MOUNTAIN &  
SOUTHERN RAILWAY COMPANY; ST.  
LOUIS & SAN FRANCISCO RAILROAD  
COMPANY; THE MISSOURI, KANSAS &  
TEXAS RAILWAY COMPANY; KANSAS  
CITY SOUTHERN RAILWAY COMPANY;  
FT. SMITH & WESTERN RAILROAD  
COMPANY; THE CHICAGO, ROCK  
ISLAND & PACIFIC RAILWAY COM-  
PANY; AMERICAN EXPRESS COMPANY;  
PACIFIC EXPRESS COMPANY, and  
WELLS FARGO & COMPANY (named  
as "The Wells Fargo Express Com-  
pany"),

DEMURRER.

Defendants.

**Separate demurrer of the above  
named defendant, Wells Fargo &  
Company, to the bill of complaint  
of the above named plaintiff.**

This defendant, Wells Fargo & Company, by pro-  
testation, not confessing or acknowledging all or  
any of the matters or things in said bill of complaint  
contained to be true in such manner and form as the  
same are therein set forth and alleged, doth demur  
thereto, and for cause of demurrer sheweth that the

said plaintiff has not in and by said bill made or stated any such cause as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto, and humbly demands the judgment of this Court whether it shall be compelled to make any further or other answer to said bill; and prays to be hence dismissed, with its costs and charges in this behalf most wrongfully sustained.

ALEXANDER & GREEN,  
CHARLES W. STOCKTON,  
Solicitors for Wells Fargo & Company.

STATE OF NEW YORK,     }  
County of New York, } ss.:

EMORY A. STEDMAN, makes solemn oath and says that he is the Vice-President and General Manager of Wells Fargo & Company, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

EMORY A. STEDMAN.

Subscribed and sworn to }  
before me this 3d day }  
of October, A. D. 1910. }

W. F. COLLINS,

[SEAL.] Notary Public, New York County.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

WM. W. GREEN,  
Of Counsel for defendant, Wells  
Fargo & Company.



ORIGINAL No. 14

IN THE

SUPREME COURT

OF THE

UNITED STATES

OF OKLAHOMA

*Complainant*

vs.  
NICHOLSON, TOPEKA & SANTA  
RAILWAY COMPANY, et al

*Defendants*

Prayer Against Demurrer to Bill

CHAS. WEST

Attorney General of the State of Oklahoma

For the State

ORIGINAL No. 14

IN THE

SUPREME COURT

OF THE

UNITED STATES

---

STATE OF OKLAHOMA

*Complainant*

vs.

THE ATCHISON, TOPEKA & SANTA  
FE RAILWAY COMPANY, et al

*Respondents*

---

BRIEF AGAINST DEMURRER TO BILL.

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**STATEMENT**

The bill was filed by leave of this court May, 1910.

In October, 1910, a separate demurrer for the A., T.  
& S. F. and the Gulf, Colorado & Santa Fe was filed.

The bill alleges:

Pp. 1-3. A controversy between the state and foreign citizens.

P. 4 That previous to statehood the Indian tribes in Indian Territory had made treaties whereby the Federal government has obligated itself to prevent the traffic in intoxicating liquors therein.

Pp. 5-8. Pursuant to said treaties and laws the national government required of the state as conditions precedent to statehood that it should:

(a) For at least twenty-one years prohibit the traffic in intoxicating liquors in the eastern half of the state (Indian Territory), and the Osage and other reservations

(b.) Disclaim all control over the Indians and the Indian tribes.

P. 8. That the Constitution of the State obligates the State to carry out the laws and the treaties so far as it has the power.

P. 9. That defendants openly, notoriously, persistently and continuously (a nuisance) violated said laws, treaties and the laws of the state by introducing, furnishing and conveying intoxicating liquors into said state.

P. 9. That defendants' continuous breach of the laws irreparably injures the good citizenship and property of the state and its inhabitants.

P. 9. That defendants threaten to continue unless restrained.

P. 9. That defendants' acts amount to a surrender of their corporate rights in the state.

Pp. 9-60. That certain persons within the state

have made payment of the special internal revenue tax for the sale of intoxicating liquors. Their names and addresses are given.

Pp. 60-61. That by the terms of the enabling act said state was required to provide and did so provide, that the payment of said special tax should constitute *prima facie* evidence of an intent to violate the prohibitory law.

Pp. 62-94. That the State extended over its entire length and breadth the provisions required of it by congress to be enacted as to the eastern portion.

P. 79. The Act provided that "to have the possession of any such liquors with the intention of violating any of the provisions of the Act" was a crime.

P. 85. The act provided:

Sec. 14. "All places where liquors of any kind are manufactured, sold, bartered, given away or otherwise furnished in violation of any of the provisions of this Act are hereby declared to be public nuisances." \* \* \*

P. 93. That due notice by a proper officer was made in writing to each of the defendants warning them of the payment by the retail liquor dealers of the special tax and their intent to violate the law.

P. 94. That the state would make the claim presented here.

P. 95. That the importation of such liquors to such persons having made such payment of such tax is a nuisance, not in good faith for their own use, but for sale in the state and said eastern portion.

P. 95. That any delivery of such liquors to such persons would have the *necessary* effect of aiding the consignee in violating the law.

(4)

P. 96. That the state through one of its agencies furnishes liquor where its sales are not prohibited by the laws enacted by the state in obedience to its promise to Congress.

Pp. 96-97. That defendants continue importation to said special tax payers and to persons in the portion of the state formerly Indian Territory and the Osage Indian Reservation.

P. 97. That such liquor so imported is resold in Oklahoma to its enormous, irreparable damage and expense, to the corruption of its official and commercial life, and the great exaggeration of the difficulty of contention with the illegal liquor traffic within said State.

P. 98. The prayer was:

(a) Injunction against importation of intoxicating liquors to persons holding Federal licenses.

(b) Injunction against such importation to any persons at any place within that portion of the State formerly Indian Territory, the Osage Indian Reservation or other reservations in the State.

(c) That in default of obedience in said matters, that defendants' corporate rights in said state both for interstate and intrastate business be forfeited.

The demurrer of the A., T. & S. F. and the G., C. & S. F. was that the bill did not state cause entitling the plaintiff to relief.

## BRIEF

THE CASE TURNS on meaning and effect of:

1. Oklahoma Enabling Act (34 Stat. 267, ch. 3335, approved June 16, 1906).
2. Together with Wilson Act (approved Aug. 8, 1890).
3. Various agreements with the Indian tribes, prohibiting commerce in liquors:  
Especially with Seminoles (30 Stat., 567),  
with Creeks (31 Stat., 861),  
with Cherokees (14 Stat., 799),  
with Choctaws—Chickasaws (14 Stat., 769).
4. Various acts dealing with the Indian tribes, their property and persons:  
Especially: Act of Mch. 3, 1893 (27 Stat., 645),  
Act of Mch. 3, 1901 (31 Stat., 347),  
amending Act of Febr. 8, 1887 (24 Stat., 390), and later acts and resolutions.

And 5. Various acts of Oklahoma attempting to carry out its duties under these laws and agreements.

I.

(Oklahoma Enabling Act.)

The question is, what was the meaning of the Enabling Act at statehood (Nov. 16, 1907), what was the duty, object and purpose of Congress, and the object, purpose, policy and power of the State thereunder.

The Enabling Act (34 Stat., 267, ch. 3335) is to be interpreted as of November 16, 1907.

Pickett vs. United States, 216 U. S. 456.

Before admission, Congress had all the power in the territories both national and municipal.

Pollard's Lessee vs. Hagan, 3 How. 212.

It had the duty of legislating as to the Indian Tribes, under the constitution, Art. 1, Sec. 8.

This power was plenary, (Cherokee Nation vs. Southern Kan. Ry., 135 U. S. 641) and should be considered in finding the meaning of the Oklahoma Enabling Act unless Congress is to be understood as putting the Indian *sui juris*, and beyond its power to reassume authority over him (In re Heff, 197 U. S. 488).

IV.

(Acts dealing with Indian Tribes.)

It is, therefore, necessary to consider the acts of Congress as to whether the Indian in Oklahoma is ever wholly *sui juris*, (subjected to the laws both civil and criminal of the state where he resides,) as he *was* in *re* Heff, or as he *was not* in *United States vs. Celestine*, 215 U. S. 278.

Distinction between *In re Heff, supra*, and *United States vs. Celestine, supra*, pointed out and the Indians in Oklahoma identified in position with *Celestine*.

U. S. *vs.* Allen, 179 Fed. 13.

Grant of citizenship does not terminate government's control.

*State vs. Columbia George*, 65 Pac. 604, and cases there cited.

Allotment does not end control.

*Kansas Indians*, 72 U. S. (5 Wall.) 737.

Allotment in severalty does not terminate existence of reservation.

*Eells vs. Ross*, 64 Fed. 417.



Citizenship does not relieve or take away power or duty of government toward Indians.

U. S. vs. Mullin, 71 Fed. 682.

Allotment does not terminate tribal existence.

Rainbow vs. Young, 161 Fed. 835.

No provision as to subjection to civil and criminal laws of state is contained in Cherokee, Choctaw, Chickasaw, Creek and Seminole treaties.

These tribes expressly excepted from operation of Act of Febr. 8, 1887, (Act under which Heff's allotment was made) as first adopted by Section 8 thereof.

Later by Act of Mch. 3, 1901, the act of Febr. 8, 1887, was amended by inserting "the Indians in the Indian Territory," not in the first sentence of Sec. 6 (as in re Heff) but last sentence (as in U. S. vs. Celestine).

The allotments made to these Indians were made under Act of March 3, 1893 (creating the Daws Commission) and acts supplementary thereto. While Act of March 3, 1893 provided in Section 15 for citizenship for the Indians, it expressly refuses to surrender any of the government's power.

Its concluding words are:

"NEITHER THE PROVISIONS OF THIS SECTION NOR THE NEGOTIATIONS OR AGREEMENTS WHICH MAY BE HAD OR MADE THERE-

UNDER SHALL BE HELD IN ANY WAY TO WAIVE OR IMPAIR ANY RIGHT OF SOVEREIGNTY WHICH THE GOVERNMENT OF THE UNITED STATES HAS OVER OR RESPECTING SAID INDIAN TERRITORY OR THE PEOPLE THEREOF, OR ANY OTHER RIGHT OF THE GOVERNMENT RELATING TO SAID TERRITORY, ITS LANDS, OR THE PEOPLE THEREOF."

### III.

#### (Agreements with Indian Tribes.)

It, thus, is necessary to see what promises the United States had made.

These against introduction of liquor into the Five Tribes:

With Seminoles (30 Stat. 367), with Creeks (31 Stat. 861), with Cherokees (14 Stat. 861), with Choctaws and Chickasaws (14 Stat. 769).

Carrying out its promises, it had enacted prohibition of introduction of intoxicating liquors into the Indian Country:

Act of July 9, 1832, 45 Stat. 562;

June 30, 1834, 4 Stat. 732;

Mch. 15, 1864, 13 Stat. 29;

Rev. Stat., Section 2939;

Amended Act July 23, 1892, 27 Stat. 260.

"Indian Country" is west of Mississippi not within Missouri, Louisiana, or Territory of Arkansas, and not within any state to which the Indian title has been extinguished. (4 Stat. 929). This definition still holds.

Bates vs. Clark, 95 U. S. 204, 209;  
Ex Parte Crow Dog, 109 U. S. 556;  
U. S. vs. Le Bois, 121 U. S. 279.

Act of Jan. 30, 1897 (295 Stat. 506) defined Indian Country as:

" \* \* \* Any Indian allotment where the title to the same shall be held in trust by the government  
OR WHILE THE SAME SHALL REMAIN IN-  
ALIENABLE BY THE ALLOTTEE WITHOUT  
THE CONSENT OF THE UNITED STATES. \* \* \*

These acts have not been repealed and apply to those portions of the state where allotments exist (which is throughout the length and breadth of the State). Opinions Atty. Gen'l, Vol. 25, p. 413. Furthermore, Section 2 of the Schedule of Oklahoma Constitution constituted these as laws of the state wherever there is Indian country.

Because the Osage and other reservations were a part of Oklahoma Territory, therefore these were laws in force in Oklahoma Territory at the time of its admission into the Union.

All the agreements provide that allotments shall be in-

alienable for definite periods without the permission of United States.

Seminole Agreement (30 Stat. 567);

Creek Agreement (31 Stat. 861);

Choctaw-Chickasaw (30 Stat. 495);

Cherokee (32 Stat. 716).

## II.

### (Wilson Act.)

As far as prior legislation of Congress is concerned, only the Wilson Act need be considered in addition to the laws and treaties cited under the third head.

Only importations for the exclusive use of the importer are protected from the states police law, and then only till delivery.

Vance vs. Vandercook Co., 170 U. S. 438.

It was the good faith importation not intended for sale which the Vandercook case protected.

Pabst Brewing Co. vs. Orensbow, 198 U. S. 25;

Heyman vs. So. Ry. Co., 203 U. S. 275.

Distinction between good and bad faith shipments noted in

Heyman vs. So. Ry. Co., 203 U. S. 275;

Delamater vs. So. Dakota, 205 U. S. 93.

(12)

That a bad faith carrier may be a crime, participant stated in

Adams Express Co. vs. Kentucky, 206 U. S. 129.

V.

(Oklahoma Laws.)

Prohibition of possession within intent to use in violation of law.

Bill, p. 79, lines 10 to 13.

Bill alleges importations intended for sale and that deliveries necessarily assisted illegal sales.

Page 95.

Each participant in furnishing is a principal; no agency in crime.

Buchanan vs. State (Okla. Crim. Ct. App., unreported.)

The instant goods intended for illegal use are in possession, act is violated.

Billingsley vs. State (Okla. Crim. Ct. App., unreported.)

Quantity of liquor in possession, evidence of bad intent.

Billingsley vs. State, *supra*.

Payment of special tax is *prima facie* evidence of intent to violate law.

Billingsley vs. State, *supra*.

Courts judicially know that "R. L. D." on records of internal revenue collector means "Retail Liquor Dealer."

Billingsley vs. State, *supra*.

Bowman vs. C. & N. Ry., 125 U. S. 465, was predicated upon the necessity for uniformity as between the states of laws affecting interstate commerce in intoxicating liquors.

Rhodes vs. Ia., 170 U. S. 427

Bowman case affirmed rule as in the absence of *congressional consent* to a state to legislate.

125 U. S. 475, 476.

ENABLING ACT IS EXPRESS CONSENT OF CONGRESS TO OKLAHOMA TO FORBID AND PREVENT IMPORTATION INTO THE INDIAN TERRITORY ALTOGETHER, AND IN OKLAHOMA TERRITORY WHEN SHIPMENTS IN BAD FAITH OR TO PERSONS WHO HAD PAID SPECIAL TAX.

Congress can consent.

In re Rahrec, 140 U. S. 559;

People vs. Hesterberg, 3 L. R. A. (N. S.) 167;

N. Y. ex rel. vs. Hesterberg, 211 U. S. 29.

OKLAHOMA INTENDED TO BE EMPOWERED SUFFICIENTLY TO CARRY OUT THE PLEDGE MADE THE INDIANS BY THE GOVERNMENT.

## ARGUMENT

---

### THE RELATION OF THE GOVERNMENT TO THE INDIANS GENERALLY.

Apparently the relation of the government to the Indian is indissolubly connected with every issue in this case. Because I do not agree with the conclusion that counsel for the defendants draws from the facts, I consider it better to restate the facts as to these relations, calling attention to the conclusions which seem to me properly deducible.

By Act approved February 8, 1887, 24 Statutes at Large, 388, a new policy as to the disposal of the Indians' lands was adopted by the Federal government, to wit, that of the allotment thereof in severalty and the creation of an individual as opposed to the communal treatment of the Indian lands theretofore pursued by the government. Section 5 of that Act provides:

"That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the

allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void."

Let it be noted in this connection that the provision is for a trust in the government, the same to be completed at the end of twenty-five years, giving to the president discretion to extend the period and providing any conveyance or contract touching the land before the expiration of the time named should be void. It is provided in Section 6:

"That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to



whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property."

In this connection Mr. Justice Brewer for this court pointed out in *United States vs. Celestine*, 215 U. S. 278 that the first sentence applies to allotments and patents made under the authority of this act, whereas the other sentence refers to allotments either made under this act or under any law or treaty. As to those made under this act it is provided that such allottees shall "be subject to the laws, both civil and criminal, of the State or Territory in which they may reside;" but as to those whose allotments are not made under the act of 1887, it is only provided that he shall "be a citizen of the United States, and is entitled to all the rights, privileges and immunities of such citizens." Bob Celestine was an allottee, not under the act of February 8, 1887, but the treaty with the Omahas, March 16, 1854, 10 Statutes, 1043, and the treaty of Point Elliott, January 22

1855, 12 Statutes, 927, and, to use the words of the lamented Justice:

"In other words so far as the plea is concerned, it is only that Celestine was a citizen of the United States, and entitled to all the rights, privileges, and immunities of such citizenship,"

AND NOT SUBJECT TO THE LAWS, CIVIL AND CRIMINAL, OF THE STATE OR TERRITORY IN WHICH HE RESIDED, as was the case In Re Heff, 197 U. S. 488, in which latter case the allotment was under the Act of February 8, 1887, and not under any other law or treaty. This distinction between the Heff case and this case, which is in this matter precisely like the Celestine case, is the vice that infects the whole of the defendants' argument. Their argument is, in effect, that because the allottee is subject to the laws, both civil and criminal, of the State or Territory in which he resides, as was the result in the Heff case, the Indian is placed out of the pale of the protection of the United States government, making him one *sui juris*, and, therefore, the defendants deduce the conclusion that the laws of the United States made for the protection of the Indian as ward have ceased and terminated their existence. Before leaving the Act of Febr. 8, 1887, it is necessary to note that section 8 specifically provides that it shall not apply to the Indians in the Indian Territory:

"That the provision of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage Miamies and Peorias and Sacs and Foxes, in the Indian Territory nor

to any of the reservations of the Seneca Nation of New York Indians in the State of New York nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by executive order."

On the 3d of March 1901 the Act of February 8, 1887, was amended so as to make a part of it, at least, to apply to the Indian in the Indian Territory. The last sentence of Section 6 was amended to insert after the words "civilized life" the words "and every Indian in the Indian Territory." This Act is 31 Statutes at Large, page 1447, Chapter 868, and the consequence is as Mr. Justice Brewer put it, that now since the 3d of March, 1901, every Indian in the Indian Territory "is hereby declared to be a citizen of the United States and is entitled to all the rights, privileges and immunities of such citizens." It is to be noted in this connection that the Indian in the Indian Territory is not put upon the plane of the Indian named in the first sentence in Section 6 of the law of February 8, 1887,—that is, he is not made one subject to the laws, both civil and criminal, of the State or Territory in which he may reside, and, therefore, clearly the result drawn in the Heff case from the wording of the first sentence of Section 6 does not apply to the Indian in the Indian Territory, and this because Congress, which could have placed the words "Indian Territory" in the first sentence, must be concluded to have omitted to do so on purpose and to have purposely said as to the Indian in the Indian Territory that he should not be an Indian *sui juris*, but that he should be an Indian who should have the citizenship of a citizen of

the United States, that is, not be subject to the laws, civil and criminal, of the State or Territory in which he may reside, but still under the protection of the United States (*United States vs. Celestine*, 215 U. S., 281). In this connection warning is given that I do not mean in this brief to say anything as to the property rights of the Indian in the Indian Territory after his allotment. The only question involved in this case is the power of governmental control over him and his neighbors for their protection. In *United States vs. Allen*, 179 Fed., 13 and following, the opinion of the majority deduces the same conclusion as to the Indian's property that I here deduce as to governmental control over him and his neighbors for his benefit. The correctness of that conclusion as to his property is not material in this case. The dissenting opinion in that case pointed out as to the *Debs* case and others of that character, that

"they do not, as I understand them, justify governmental intervention, in behalf of private citizens except in the discharge of duties intrusted to the care of the nation by the Constitution. The intervention of the government in the *Debs* Case appears to be justified on the ground that power over interstate commerce and the transportation of the mails was vested in the national government by the Constitution."

It is to be noted that the power to legislate for the Indian tribes is precisely the same as the power over interstate commerce (*Cherokee Nation vs. Southern Kansas Railway Company*, 135 U. S., 641, at 657), and, therefore, that the dissenting opinion in the *Allen* case would probably not have

been rendered in a case involving the right of Congress to legislate for the Indian tribes in respect to a government and politics as distinguished from a question of property.

#### CONTROL OVER INDIAN TERRITORY.

The Act of March 2, 1889, 25 Statutes at Large, 1005, provided for the acquisition of certain land from the Seminole Nation and for a commission to treat with the Cherokee Indians for the purpose of acquiring certain lands from them. Section 13 of that Act provided that the lands acquired from the Seminoles should be a part of the public domain, and Section 14 provided that the lands acquired from the Cherokee Nation should be a part of the public domain, giving the President authority to open said lands to settlement. Proceeding under said Act, by Act of May 2, 1890, a temporary form of government for Oklahoma Territory was established, which territory had been opened to settlement in September, 1889, pursuant to the terms of the Act of March 2, 1889, just mentioned. It would not be questioned that Congress had all authority, both municipal and national, in the Territory of Oklahoma (*Pollard's Lessee vs. Hagan*, 3 How., 212), and after providing for a form of government in Oklahoma Territory the Act of May 2, 1890,

provided for the opening to settlement of the Public Land Strip (Section 18) and for the lands acquired of the Muskogee (or Creek) Nation of Indians and the lands acquired of the Seminole Nation of Indians. Referring to the Act of March 2, 1889, and the agreement with the Muskogees approved March 1, 1889, and then it was provided that "whenever any of the other lands now occupied by any Indian tribes shall by operation of law or proclamation of the President, be open to settlement, they shall be disposed of to actual settlers only," etc., and then Section 29 of said Act provides for the creation of the Indian Territory, and Section 36 of that Act undertook to vest the jurisdiction in the courts of the Indian Territory of all controversies arising between members or citizens of one tribe or nation of Indians and the members or citizens of other tribes, clearly showing an intent on the part of Congress to deal with the political matters of the Indians. Section 43 of that Act provides a method by which a member of any Indian tribe or Nation residing in the Indian Territory might become a citizen of the United States, but it is specifically provided that by becoming such citizen of the United States under the provisions of this Act, said *Indians do not forfeit or lose any right or privilege they enjoy or are entitled to as members of the tribe to which they belong*. The Act of March 3, 1891, further provides for the creation of a court of private land claims, undertaking to make a political arrangement for the purpose of settling the property rights of Indians in the

Indian Territory among others. The Act of March 3, 1893, Section 15, provided for the consent of the United States to the allotment lands of the Cherokees, Creeks, Choctaws, Chickasaws and Seminoles, and specifically provided that after the allotments were made the individuals to whom the same may be allotted shall be deemed to be in all respects citizens of the United States. It will be noted that this language does not go beyond the meaning of the second sentence in Section 6 of the Act of February 8, 1887, and, therefore the language of Mr. Justice Brewer as to the Celestine case, 215 U. S., will again be borne in mind and it will be noted that the United States did not mean at all in any way to give up its control over the Indians, because the last paragraph of the Act of March 3, 1893, provides:

"NEITHER THE PROVISIONS OF THIS SECTION NOR THE NEGOTIATIONS OR AGREEMENTS WHICH MAY BE HAD OR MADE THEREUNDER SHALL BE HELD IN ANY WAY TO WAIVE OR IMPAIR ANY RIGHT OF SOVEREIGNTY WHICH THE GOVERNMENT OF THE UNITED STATES HAS OVER OR RESPECTING SAID INDIAN TERRITORY OR THE PEOPLE THEREOF, OR ANY OTHER RIGHT OF THE GOVERNMENT RELATING TO SAID TERRITORY, ITS LANDS, OR THE PEOPLE THEREOF"

How can there be any further contention in the face of this express provision that at this date, to wit, March 3, 1893, the government did not mean to surrender any control over the people or the lands?

All the various negotiations, agreements or settlements with the various Indian tribes were pursuant to the Act of March 3, 1893, *supra*. In them nowhere does there appear any idea on the part of the United States government to waive the provision made in the last paragraph of said Act of March 3, 1893, asserting its sovereignty over both the people and the lands. And in fact because the authority of Congress was conferred upon it by the Constitution it can hardly be doubted whether the Congress could divest itself of the power of exercising the authority which the constitution put upon it.

How this power is to be exercised and when it is to be exercised, is of course a discretionary matter with Congress, but the grant of power can never be lost and we have found this theory the subsisting one in Congress itself.

The resolution of March 2, 1906, extended the tribal existence of the tribal government. The act of the 26th of April, 1906, had the same effect and the Act of May 27, 1908, carries out the same program.

The power of Congress to legislate for the Indian Tribes is above and beyond any sovereignty in the State, and is a plenary and supreme power, but as to how the power shall be exercised, as stated before, this is in the hands of Congress.

Furthermore, it was provided by the Act of June 16,



1906, the Oklahoma Enabling Act, Chapter 3335, U. S. Stat, 1905-6, part 1, page 267, section 1:

“\* \* \* That nothing contained in the said constitution shall be construed to limit or impair the rights of persons or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the government of the United States to make any law or regulation respecting such Indians, their lands, property or other rights by treaties, agreement, law or otherwise, which it would have been competent to make if this Act had never been passed.”

It is provided in Section 2 of that Act:

“That all male persons over the age of twenty-one years who are citizens of the United States, or who are members of any Indian Nation or tribe in said Indian Territory and Oklahoma \* \* \* ” shall be qualified to vote for delegates to the constitutional convention.

But as already shown it is the clear purpose of Congress to make all Indians in the Indian Territory citizens of the United States by Act of March 3, 1901, 31 Stat. at large 347, *supra*.

And further it was provided in said Enabling Act, that said convention shall provide in said Constitution:

“Second, That the manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within those parts of said State now known as the Indian Territory and the Osage Indian Reservation and within any other parts of said State which existed as Indian reservations on the first day of January, nineteen hundred and six, is pro-

hibited for a period of twenty-one years from the date of the admission of said State into the Union, and thereafter until the people of said State shall otherwise provide by amendment of said constitution and proper State legislation."

Except it is provided: that the legislature may provide by law for the sale of such liquors for medicinal purposes, and for the sale for industrial purposes of alcohol, which shall have been denaturized, and for the sale of alcohol for scientific purposes, and for the sale of such liquors to any apothecary.

And it is specifically provided there

"That the payment of such special tax (that is a special tax required of liquor dealers) by any person within the parts of the state herein defined shall constitute prima facie evidence of his intention to violate the provisions of this section."

And

"Upon the admission of said state into the Union these provisions shall be immediately enforceable in the courts of said state."

And further there is provided in said act, a disclaimer forever of all right and title in or to all lands lying within said limits owned or held by any Indian, tribe or Nation.

And in section 7 of said Act it is provided, that certain provisions as to indemnity or lieu lands for school purposes shall not apply to lands owned

"by Indian Tribes or individual members of any tribe."

And Section 22,

"That the constitutional convention provided for herein shall, by ordinance irrevocable, accept the terms and conditions of this Act."

As late, therefore, as June 16, 1906, after the allotment Acts, we see Congress legislating to especially preserve and care for the Indian and the land of the Indian tribes, as well as the individual members thereof, and requiring of the state the passage of the laws prohibiting the sale of liquor, and providing that the special tax shall constitute *prima facie* evidence of an intention to violate the prohibitory provision. The Convention on the 22nd day of April, 1907, passed an irrevocable ordinance accepting the terms and conditions of the Enabling Act.

And further in the Constitution it is provided in Section 3 of Article 1, a disclaimer of all lands lying within said limits owned or held by any Indian tribe or nation; and providing in Section 7 of that article, the adopting of the provisions as to the prohibition of liquor in the very words of the Enabling Act, which I shall therefore not repeat.

And it is provided in Section 1 of Article 3 of the Constitution

"That the qualified electors of the State shall be male citizens of the United States, male citizens of the State, and male persons of Indian descent native of the United States, who are over the age of twenty-one years."

This provision was amended on the 2nd day of August,

1910, but in no wise to affect any matter material to this case. And in the Schedule of the Constitution, in Section 2, it was provided:

"That all laws in force in the Territory of Oklahoma at the time of the admission of the State into the Union which are not repugnant to this constitution and which are not locally inapplicable, shall be extended to and remain in force in the State of Oklahoma until they expire by their own limitations or are altered or repealed by law."

This provision is a modification of a portion of section 21 of the Enabling Act providing that:

"all laws in force in the Territory of Oklahoma at the time of the admission of said state into the Union shall be in force throughout said state, except as modified or changed by this act or by the constitution of the state, and laws of the United States not locally inapplicable shall have the same force and effect within said state as elsewhere within the United States."

By Section 1 of the Schedule of the Constitution of Oklahoma, which was a provision maintaining all vested rights, it was provided that

"No existing rights \* \* \* contracts, or claims shall be affected by the change in the forms of government, but all shall continue as if no change in the forms of government had taken place."

TREATY PROVISIONS AFFECTING PROHIBITION  
OF LIQUOR.

In the Treaty of 1820 with the Choctaws, made at Doaks stand on the Nachez road, Article 12, Kapplers Laws & Treaties, Vol. 2, page 192, power was given to the Indian agent to confiscate whiskey which should be introduced, and it is said that this is done in order to promote industry and sobriety among all classes of the red people in this country, but particularly among the poor and that this provision was made by the parties to the treaty.

In the treaty with the Choctaws of 1830, Article 10, Kapplers L. & T., Vol. 2, page 312 made at Dancing Rabbit Creek, it was provided :

"The United States shall be particularly obliged to assist to prevent ardent spirits from being introduced into the Nation."

In the Treaty with the Choctaws and Chickasaw. of 1866, Article 10, Vol. 2 of Kapplers Laws and Treaties, page 923 it is provided :

"The United States re-affirms all obligations arising out of treaty stipulations or act of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion, and in force at that time, not inconsistent herewith."

It re-affirms the provisions of 1830 and 1820.

The Treaty with the Cherokees of 1866 at the City of Washington by Article 27, Kapplers L. & T., Vol. 2, page 949, provided against the introducing of any spirituous, vinous, or malt liquors into the Cherokee Nation except for medical department, and then only for medicinal purposes.

The Seminole Agreement of December 16, 1897, 30 Stat. at Large, 567, provided:

"The United States agrees to maintain strict laws in the Seminole Country against the introduction, sale, barter, or giving away of intoxicating liquors of any kind or quantity."

And section 43 of the Original Creek agreement, 31 Stat. at Large, 861, provides:

"The United States agrees to maintain strict laws in said nation against the introduction, sale, barter or giving away of any kind of intoxicating liquors whatever."

Therefore, for the Choctaws, Chickasaws, Creeks, Cherokees and Seminoles there were treaty stipulations against as well the introduction as the sale or barter of liquors at the time Oklahoma was made a state.

NATIONAL LEGISLATION AGAINST INTRODUCT-  
TION OR SALE OF LIQUORS AMONG THE  
INDIANS.

The Act of July 9, 1832, 4 Stat. at Large, 562, the act of June 30, 1834, 4 Stat. at Large 732, and the act of March 15, 1864, 13 Stat. at Large 29, were all of them incorporated into the Revised Statutes as Section 2939, and were amended by the Act of July 23, 1892, 27 Stat. at Large, 260, to read as follows:

"No ardent spirits, ale, beer, wine, or intoxicating liquor or liquors of whatever kind shall be introduced, under any pretense, into the Indian Country."

It was provided, 4 Stat. at Large, 929, that:

"All that part of the United States existing west of the Mississippi river, and not within the states of Missouri and Louisiana or the territory of Arkansas, and also that part of the United States east of the Mississippi River and not within any state to which the Indian title has been extinguished, for the purpose of this act be taken and deemed Indian country."

And although this act was repealed, yet the definition "Indian Country" though not incorporated into the Revised Statutes, may be referred to in order to determine what is meant by the wording of the revised Statutes.

Bates v. Clark, 95 U. S. 204, at 209;  
Ex parte Crow Dog, 109 U. S. 556;  
United States v. LeBris, 121 U. S. 279.

By the Act of January 30, 1897, 29 Stat. at Large 506, it was provided, that:

"Any person who shall introduce or attempt to introduce any malt, spirituous, or vinous liquors \* \* \* of any kind whatever into the Indian country, which term shall include any Indian allotment where the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be punished by imprisonment," etc.

These acts have not been repealed. See Opinions of the Attorney General, Attorney General William M. Moody to the Secretary of the Interior, April 23, 1905, Opinions of the Attorney General, Vol. 25, page 413.

It is therefore believed that the provisions of the Oklahoma Enabling Act, requiring that State to prohibit liquors "within those parts of said State now known as the Indian Territory and the Osage Indian Reservation and within any other parts of the said State which existed as Indian reservations on the first day of January, nineteen hundred and six" was because of the existence of said treaty stipulations; and that the provisions in said Enabling Act and said Constitution of said state making the payment of the special tax to the United States by any person within the parts of the state thereinbefore defined, *prima facie* evidence of an intent to violate the prohibitory section, was also because of said treaty stipulations, and the power of Congress to legislate for the protection of the Indians.



Furthermore, Section 1 of the Schedule to the Constitution of Oklahoma, providing that no existing rights shall be affected by the change in the form of government, but all shall continue as if no change in the form of government had taken place, means that whereas the provisions of the Enabling Act as to prohibition, and the payment of a special tax, were for the benefit of the Indians, and whereas the ordinance irrevocable adopted by the Constitutional Convention was for his benefit, that these created rights in him, and as far as the State of Oklahoma was concerned, must be enforced.

Whether or not that is the meaning to be attributed to Section 1 of the Schedule to the Constitution of Oklahoma, Section 2 of the Schedule reaches the same result. Because Section 2 provides that:

"All laws in force in the Territory of Oklahoma, not locally inapplicable nor repugnant to the Constitution should be extended to and remain in force in the State."

it put in force in the State of Oklahoma the act of January 30, 1897, being 29 Stat. at Large, 506, *supra*, because that law was in force in the Osage Indian Reservation, at that time a part of the Territory of Oklahoma.

That the Osage Nation was within the meaning of the Act of 1897 is clear from this: That Section 21 of the Oklahoma Enabling Act speaks of this section of country as

the "Osage Indian Reservation," and section 2 of the Enabling Act recognizes the Osage Indian Reservation as Indian country, that is, apart from and in addition to the Indian Territory, providing for prohibition within those parts of said state now known as Indian Territory, and the Osage Indian Reservation, and within any other parts of said state which existed as Indian Reservations on the first day of January, 1906.

In addition there were within Oklahoma Territory on the 1st day of January, 1906, the reservations of the Otoe, Ponca, and other small reservations and tribes scattered at different places around agencies, such as at Darlington, Ft. Sill, Cantonment, and at other points in what was formerly the Oklahoma Territory, such as Shawnee, Anadarko, and other places.

Therefore the law of 1897 was a law in force in the Territory of Oklahoma, wherever there was land which was held in trust by the United States or which remained inalienable by the allottee without the consent of the United States. And all such laws, which before the advent of statehood were in force in the Territory of Oklahoma, by virtue of the supervision of Congress over a territory, became on and after that day, laws of the State of Oklahoma and in force therein by virtue of the second section of the Schedule.

## OKLAHOMA OWES PECULIAR DUTY TO INDIANS.

For these reasons let me urge that the State of Oklahoma does not stand in regard to interstate commerce in ardent spirits in the same position as the other states of the Union. Alone, of all, it stands, because of the presence within it of Indian tribes in such comparative number, and of the duty it therefore owed, not only to all people of other races but to its Indian citizens. The Congress of the United States acting within the limits of the power conferred upon it by the constitution to legislate as to the Indian tribes, not only gave its consent that the State of Oklahoma shall control such commerce, but so far as the eastern part of the State is concerned has required that the state take such prohibitory action. The Enabling Act provided that the laws of the Territory of Oklahoma should be extended over both the Indian Territory and Oklahoma Territory, until such laws shall expire by their own limitations or be modified. It evidently had in mind that the State should find its best policy in having the same law throughout the whole of the state.

As Congress commanded the State as a condition precedent that it should accept prohibition for the Indian Territory, it was natural to be supposed that the State would adopt the same policy throughout its entire length and breadth. And, therefore, the interstate commerce in intoxicating liquors so far as the State of Oklahoma is concerned bears a

very different aspect than elsewhere in the Union. What is said in the Dick case is essentially apposite to this idea.

In the case of Dick vs. U. S., 208 U. S. 340, the whiskey was purchased and given to the other Indians in the village of Culdesac (p. 351) and it was found that the lands upon which the village was located were part of those ceded to the United States upon which patent had issued from the United States under the townsite laws before the transaction as to the whiskey. As to the person of Dick and Te-We-Talkt, they received patents under the Act of February 8, 1887, and, were, therefore, by the first sentence of Section 6 thus made subject to the laws of the state or territory in which they resided, and it was provided in that case that all the lands, both those ceded and those allotted, should be subject for twenty-five years to the Federal laws prohibiting the introduction of intoxicants.

What the court says as to the object of the Indians in protecting those Indians living upon allotted lands as against the use of whisky by persons on other lands is applicable to the situation here, and for the same reason that the Indians in the Federal government agreed that whiskey should not be introduced either into the allotted lands or the ceded lands, for that very reason in the case of the Indian Territory of the Osage Indian Reservation and all other Indian reservations in Oklahoma Territory, the national government provided that the State of Oklahoma must as a condition precedent to its admission adopt a law which required the pay-

ment of the special tax to the government to be prima facie proof of an intention to sell liquor, and the court states most emphatically that while the rule of the Heff case applies to allotments created under the Act of February 8, 1887, yet that a different rule might be made, (as was the case of the Nez Perce Indians.)

THE UNITED STATES STILL HOLDS THE POWER  
OF CONTROLLING THE INDIAN AND COM-  
MERCE WITH HIM.

Power of the United States to control the land of the Indians is affirmed in *U. S. vs. Rickert*, 188 U. S. 432.

This power was affirmed again in *McKay vs. Kalyfon*, 204 U. S. 458.

And it was said that this rule was not effected by the decision in *Re Heff*.

It was said in *U. S. vs. Allen*, 179 Fed. 13, that the policy of the United States in dealing with the Indian and his land is a governmental power, and that the United States had a right to bring a suit to set aside conveyances made in violation of the allotment act; it was pointed out that the Act of February 8, 1887, under which the Heff case arose,

was quite different from the acts under which allotments in the Indian Territory have been made.

But the specific provisions of the Act of March 3, 1893, 27 Stat. at L. p. 646, to the effect that "the government did not waive or surrender any right of sovereignty or any other right over the Indian Territory, or the people, or the land therein" was not pointed out.

The distinction pointed out in the case of *U. S. v. Celestine*, 215 U. S. 278, followed by *U. S. v. Sutton*, 215, U. S. 291, were remarked, and it was said that

The grant of citizenship to the Indian did not destroy the right of the Federal government to regulate and restrict his use of these lands. Though a citizen of the United States, he did not cease to be an Indian, and both he and his property remain subject to the National Government.

The dissenting opinion of Judge Adams is based upon a point that does not exist in the case, to-wit: that the interference of Congress in the *Debs* case was where the Congress had a duty of a national character. Judge Adams conceived that the title to the land in private persons was not of that public nature. Certainly, a regulation of intoxicating liquors, except a regulation or prohibition of intoxicating liquors, as to a community where Indians largely reside would be within the power of Congress under the Constitution.

The right of Congress to legislate as to Indian lands was affirmed in *National Bank v. Anderson*, 147 Fed. 87.

In *United States v. Thurston County*, 143 Fed. 287, it was said that the Congress of the United States had the authority to declare the inalienable lands of Indians non-taxable, because the lands were "instrumentalities lawfully employed by the nation in the exercise of its powers of government to protect, support and instruct the Indians." Therefore, Congress would have the same authority today to control both inter and intra-state commerce in intoxicating liquors where the same might affect the Indians, and to require of the State of Oklahoma that it should adopt a prohibitory law in the Indian Territory.

The duty and right of the United States in the protection of the Indian and his property is again asserted in *U. S. v. Dooley et al.*, 151 Fed. 691.

In *State v. Columbia George*, 65 Pac. 604, and following, the court considers whether the giving of state citizenship terminated the right of control on the part of the United States, and many authorities are cited to the effect that the citizenship in the state does not take the Indian out of the control of the United States. The court in that case said:

"It would seem, therefore, that citizenship, such as extends within the purview of the Dawes Act to Indian allottees, is neither inconsistent nor incompatible

with the status of a tribal Indian; that the government, while it bestowed citizenship, has not thereby relinquished the guardianship of the tribes, indulging them yet a little while, but with greatly restricted authority in their primitive government; and until the general government has taken its hands off, and relinquished supervision over its Indians, the state court cannot assume jurisdiction touching the criminal acts of one against another. The condition may appear to be an anomalous one that a person may be admitted to citizenship under one government and yet be permitted to maintain allegiance to another, however primitive that other may be."

The allotment of lands in severalty does not take the Indian from the control of the government.

The Kansas Indians, 72 U. S., 5 Wall. 737.

In *Eells v. Ross*, 64 Fed. 417, it was held that the allotment of lands in severalty did not revoke the reservation.

In *U. S. v. Mullin*, 71 Fed. 682, it was said that

"The fact that the Indian became a citizen of the United States did not relieve the general government of its duties of guardianship and protection towards him."

And, finally, in *Rainbow v. Young*, 161 Fed. 835, it was held that the tribal relations were not terminated by the allotment of land. It was said:

"While the members of the Winnebago Tribe have received allotments in severalty and have become citizens of the United States and of the State of Nebraska, their tribal relations have not been terminated."



As to the matter of Heff, it must be noted at 197 U. S. 501, that the treaty with the Kickapoos provided, in Article 3, that where the allotments were made and the patents issued, that competent persons should cease to be members of the tribe. No such provision is to be found as to the Cherokees, Creeks, Choctaws, Chickasaws and Seminoles.

#### THE MEANING AND EFFECT OF THE CONGRESSIONAL ACTS AS APPLIED TO THE INTRODUCTION OF LIQUOR IN OKLAHOMA.

From a consideration of the Acts against the introduction of liquor into the Indian country there can be no doubt that under the acts of Congress, the Indian Territory, together with the Osage Indian Reservation and all other reservations in the State of Oklahoma, was still Indian Territory, and that wherever there is an allotment which is inalienable at this time, that such land is Indian Territory, and that intoxicating liquors will not be introduced into the same, either by interstate or intrastate commerce by force of the laws of the United States,, and may not be introduced into any part of the same by intrastate commerce by force of the laws of the State of Oklahoma prohibiting the conveying of intoxicating liquors from point to point in the United States.

Therefore, that as to the Indian Territory and all other Indian reservations, an injunction should be allowed in this case without further consideration.

It now remains to consider the effect of the acts of Congress as affecting interstate commerce in intoxicating liquors with those portions of the State of Oklahoma which are not now Indian reservations, nor the Indian country, nor allotments at this time inalienable.

Attention was already noted to the fact that the prohibitory laws of the State of Oklahoma have been adopted not in the first place in its sovereign power to adopt the same by a police regulation, but because the authority and power of Congress to protect the Indian afforded it the right which it used of adopting the enactment of the same as a part of the Constitution of the State for the term of twenty-one years at least as to all that portion of the state formerly the Indian Territory or the Osage Indian Reservation, or other reservations within the state, and providing specifically as to that portion of said state that the payment of the special tax to the Federal Government should be a *prima facie* evidence of an Indian to sell liquor.

As formerly adverted to, it must have been contemplated by Congress that what it compelled to be the law for the eastern half of the state would naturally be the law for the whole of the state, and, therefore, Congress, in the broadest sense, even to the extent of adopting the same, has con-

mented to the enactment of the legislation of Oklahoma on the subject of the prohibition of intoxicating liquors.

As to the provision required by Congress that the payments of the special tax should be *prima facie* evidence of the intent to sell, such statutes have been upheld as constitutional in the state courts. See:

23 Cyc. p. 255, and authorities there named.

This provision of law has been sustained by the Oklahoma courts.

#### MEANING OF WILSON ACT AS AFFECTING OKLAHOMA.

The Bill, on page 95 thereof, says:

"The importation of any prohibited intoxicating liquor to or to the order of any of said persons (that is, persons who hold government licenses) by either or any of said defendants was and is a public nuisance within the State of Oklahoma, and were not importations in good faith and intended for the use of the importer and consignee, and not for sale within the state; and that all shipments or deliveries made by the defendants by interstate shipment to any or all of the persons named in said list were intended for and were for the violation of the laws of the State of Oklahoma and to commit a public nuisance in said state; that the

State of Oklahoma thereby was not undertaking to object or restrict the defendants in the importation of intoxicating liquors, by interstate shipment to any person in said state outside of what was formerly Indian Territory, the Osage Indian Reservation, and an Indian reservation, January 1, 1906, intending it for his own use and not for sale in said state, but that under the law of said state each and all of said persons intended to use all the liquor in their possession to sell the same in said state in violation of its laws, and that any delivery of prohibited intoxicating liquors to any of said persons would have the necessary effect of aiding such consignee to violate the laws of the State of Oklahoma, and would be a public nuisance and injury to the said state."

And further the bill showed that the defendants, and each of them, were notified of all these facts.

This court held in *Vance v. Vandercook Co.*, 170 U. S. 438, that importations into the State of South Carolina "on the orders of such residents for their own use" were legal shipments, but "it further follows that the decree below was wrong in so far as it restrained the state officers from levying upon the property of the complainant shipped into the state to agents of complainant for the purpose of being stored and sold therein in original packages, and from interfering with such sales."

The State of Oklahoma does not mean to interfere with *bona fide* shipments made for the exclusive use of the importer into those portions of the state not the Indian Ter-

ritory, or the Osage Indian Reservation, on the 16th day of November, 1907, or an Indian reservation on the first of January, 1906.

But under the rule of the Vandercook case, it is contended that these shipments which the bill alleges are all of them made for the purpose of violating the laws of the State of Oklahoma, in committing a resale thereof in Oklahoma come under that portion of the Vandercook case wherein it was affirmed that the state officers had a right to levy upon such shipments in the original packages. In other words, it is contended that the interstate commerce laws only protect a shipment made for the exclusive use of the importer and afford no protection to one whose purpose is to violate the state law by a resale.

That this was what was meant to be held in the Vandercook case appears first from the dissenting opinion therein, and afterwards from the various cases in this court in which that case has been mentioned.

In *Pabst Brewing Co. v. Crenshaw*, 198 U. S., at page 25, the present Chief Justice, speaking for the court, said as to the Vandercook case, and as an explanation of what was therein decided:

"In so far, however, as the state law imposed burdens on the right to ship liquor from another state to a resident of South Carolina, *intended for his own use and not for sale within the state*, the law was held to be repugnant to the Constitution, because the Wilson

Act, whilst it delegated to the state plenary power to regulate the sale of liquors in South Carolina shipped into the state from other states, did not recognize the right of a state to prevent an individual from ordering liquors from outside of the state of his residence *for his own consumption and not for sale.*"

And in the dissenting opinion filed in that case, Mr. Justice Brown, in speaking of the Vandercook case, says at page 42:

"The case turned upon the power of the consignee of liquors to receive them *for his own use* within the State of South Carolina, as well as the power to sell them in the original unbroken packages as imported, to citizens of South Carolina. *It was held in substance that the consignee had the constitutional right to receive them for his own use without regard to the state laws, but that, under the Wilson Act, he could no longer assert a right to sell them in original packages in defiance of the state laws.*"

Furthermore, in *Heyman v. Southern Railway Co.*, 203 U. S. 270, at page 275, the present Chief Justice, speaking for the Court, said as to the Vandercook case, taken together with *Scott v. Donald* and *Rhodes v. The State of Iowa*, *supra*:

"It follows that, under the Constitution of the United States, every resident of South Carolina is free to receive *for his own use* liquor from other states, and that the inhibitions of a state statute do not operate to prevent liquors from other states from being shipped into such state, *on the order of a resident for his own use.*"

Again, at page 277, he says:

"The ruling made in *Vance v. Vandercook Co.*, No. 1, *supra*, upholding the right of a citizen of one state to bring from another state into the state of his residence, and keep therein, *for his personal use*, the merchandise referred to in the Wilson Act.

And further continuing, Mr. Justice White, for the court at that time, makes the very distinction that we are seeking to draw in this case. He says:

*"We are not called upon to consider whether, if the power of the state had attached by delivery, the state might not have levied upon the goods on the charge that they had not been bona fide brought into the state, and were not held by the consignees for their personal use, and, therefore, were not within the ruling in Vance v. Vandercook Co., No. 1, supra."*

Again, in *Dalamater v. South Dakota*, 205 U. S. 93, at pages 101 and following, the present Chief Justice makes the distinction we are seeking to draw. He repeats the language of the Vandercook case that

*"In so far, however, as the state law imposed burdens on the right to ship liquor from another state to a resident of South Carolina, intended for his own use, and not for sale within the state, the law was held to be repugnant to the constitution,"*

because the Constitution

*"did not recognize the right of a state to prevent an individual from ordering liquors from outside of the state of his residence for his own consumption, and not for sale."*

"It having been thus settled that, under the Wilson Act, a resident of one state had the right to contract for liquors in another state and receive liquors in the state of his residence for his own use."

And the court says that there is a broad

*"distinction between the want of power of a state to prevent a resident from ordering from another state liquor for his own use and the plenary authority of a state to forbid the carrying on within its borders of the business of soliciting orders for intoxicating liquors situated in another state."*

In *Adams Express Co. v. Kentucky*, 206 U. S. 129, at page 137, Mr. Justice Brewer calls attention to the distinction that may exist between a carrier in good faith dealing in interstate commerce, and one which, as a fact, is not confining itself strictly to its business as a carrier, but by its conduct is participating in illegal sales.



## OKLAHOMA LAW IMPUTES BAD FAITH TO RESPONDENTS.

The Oklahoma law forbids

*"the possession of any such liquors with the intention of violating any of the provisions of this Act."* (Bill, p. 79, lines 10 to 13.)

The bill alleges that such liquors are (p. 95)

"not imported in good faith, intended for the use of the importee and consignee, and not for sale within the state; and that all shipments to any or all of said persons named in said list were intended for and were for the violation of the laws of the State of Oklahoma and to commit a public nuisance in said state"

The carriers were thus necessarily participants in what was a crime (possession with intent to violate), and a nuisance. They were notified that said consignees held such licenses and had paid such special tax.

The Criminal Court of Appeals of Oklahoma has held that the instant one possesses liquor shipped by interstate shipment with the intent to violate the Oklahoma law, that he is guilty of the crime and the good subject to seizure.

Logan Billingsley v. State, Criminal Court Appeals, Oklahoma, December Term, 1910. (Unreported.)

It has also held that there can be no agency for the

commission of crimes in the sense that the agent is guiltless. That one who is an agent of a crime perpetrator, and is so knowingly and wilfully, is himself a principal in a crime.

W. A. Buchanan v. State, Criminal Court Appeals, Oklahoma, December, 1910, Term. (Unreported.)

Thus the carrier is necessarily and knowingly in this case a crime perpetrator, unless the Federal laws burden him with the duties of delivery in such case.

The Vandercook case only affirmed the right and duty to deliver a shipment for the use of the importer, and not for sale.

It denied that right or duty when the goods were *"shipped into the state \* \* \* for the purpose of being stored and sold therein in original packages."* (p. 457.)

The Vandercook case did not expressly draw the conclusion that the carrier in such case had no right or duty of shipment. But held that the state officers had no power of seizure where there was the right of delivery for consumption by importer and not for sale, and held that they had the right of seizure when it was shipped for sale.

The quantity of liquor in possession or shipped is a circumstance to be considered in determining the intent to sell.

Billingsley v. State, *supra*.

The fact that the consignee frequently received shipments of liquor in quantities larger than he himself might reasonably consume is such a circumstance also.

Billingsley v. State, *supra*.

Payment of the special tax to the internal revenue collector is *prima facie* evidence of intent to sell.

Billingsley v. State, *supra*.

The courts will take judicial notice that the abbreviation "R. L. D." in the records of the internal revenue collector means "Retail Liquor Dealer," and is *prima facie* proof of such intent.

Billingsley v. State, *supra*.

Finally the bill (p. 95) alleges:

*"That any delivery of prohibited intoxicating liquors to any of said persons would have the necessary effect of aiding such consignee to violate the laws of the State of Oklahoma, and would be a public nuisance and injury to the said state."*

This is stronger than a bare allegation that the carriers knew that the shipments were intended for sale. Because under its terms the shipments necessarily had that effect.

## PROCEDURE.

Section 5771, Compiled Laws of Oklahoma, 1909, Snyder, places the duty on the Attorney General of the state of proceeding by injunction to restrain the continuance of and abate nuisances.

Such was the common law.

Attorney General v. Great Northern Ry. Co., S. C. 29, L. J. Ch. 794, 6 Jur. (N. S.) 1006; 8 W. R. 556.

Section 6189, Compiled Laws of Oklahoma, 1909, Snyder, places the duty on the Attorney General of the state of proceeding to oust a corporation of its corporate rights when it is abusing its franchise.

Where part of the relief desired is such that equity should have jurisdiction of an action seeking it, jurisdiction will not be denied because also relief is sought which might be obtained at law.

U. S. v. Union Pac. Ry. Co. et al., 160 U. S. 1, at p. 51.

THIS CASE STANDS UNLESS CARRIER IMPELLED  
TO CARRY LIQUOR KNOWINGLY FOR  
ILLEGAL USE.

From this we deduce that if the carrier is notified that presumptively the consignee intends it for sale, together with the allegations that shipments were actually intended to violate the law, and necessarily have that effect, that in such case the carrier commits a nuisance subject to injunction for abatement and forfeiture of corporate rights in the state, unless the duty of delivery is placed upon it by Federal law.

This point has never been absolutely foreclosed by a decision of this court. Particularly, it has never been decided as applied to the peculiar situation of Oklahoma, growing out of the presence of the Indian tribes, and the treaties of the United States to prevent the introduction of whisky among them, and the legislation of the United States to that effect, as well as its requirement that, for the eastern part of the state, prohibition should be the law.

A short review of the decisions by this Court is therefore necessary.

It will be found in the dissenting opinion of Messrs. Justices Gray, Harlan and Brown, *Rhodes v. Iowa*, 170 U. S. 426, at page 427:

"In *Pierce v. New Hampshire* (reported under the name of *The License Cases*, 5 How. 504) a statute of New Hampshire, prohibiting sales of intoxicating liquors by any person without a license from municipal authorities, and authorizing licenses to be granted only to persons residing within the state, was held by all the Justices to be constitutional and valid, as applied to a barrel of intoxicating liquors, brought into New Hampshire from another state, and sold in New Hampshire by the importer, in the same barrel, unbroken and in the same condition in which it had been brought in—there having been no legislation of Congress upon the subject.

"That decision was afterwards repeatedly cited with approval.

"*Gilman v. Philadelphia*, 3 Wall. 713, 730;  
*Beer Co. v. Massachusetts*, 97 U. S. 25, 33;  
*Mobile County v. Kimball*, 102 U. S. 691, 701;  
*Mugler v. Kansas*, 123 U. S. 623, 657, 658.

"And in several cases the validity of statutes of a state, taxing the sale of intoxicating liquors brought from another state, was treated as depending upon the question whether the statutes made any discrimination in favor of liquors manufactured within the state.

"*Hinson v. Lott*, 8 Wall. 148;  
*Tierman v. Rinker*, 102 U. S. 123;  
*Walling v. Michigan*, 116 U. S. 446, 460."

DECISIONS AS TO LIQUOR REST ON THEORY  
THAT THERE MUST BE UNIFORMITY.

Continuing, the Court said:

"The theory that the bringing of intoxicating liquors from one state into another, and the selling of them there in the packages in which they had been introduced, are subjects requiring to be regulated by a national and uniform rule, and therefore within the exclusive power of Congress, and wholly free from state legislation, was not broached by any member of the court before the cases of *Bowman v. Chicago & Northwestern Railway*, 125 U. S. 465, and *Leisy v. Hardin*, 135 U. S. 100.

"In *Bowman's* case, Chief Justice Waite and two other justices dissented, and in *Leisy's* case three justices dissented; and the reasons for and against the decisions were stated at length in the opinions delivered in those cases."

In *Bowman's* case the majority of the court recognized that the statute was adopted as a police regulation, and not for the purpose of regulating commerce, 125 U. S. 475, 476.

"Nevertheless, the provision was held to be unconstitutional and void, as applied to a railroad company transporting intoxicating liquors into the state from another state, upon the ground that the state 'CANNOT, WITHOUT THE CONSENT OF CONGRESS, EXPRESS OR IMPLIED, regulate commerce between its people and those of the other states of the Union in order to effect its end, however desirable such a regulation might be.' 125 U. S. 493."

In *Leisy v. Hardin*, two years later, the majority of the court

"treated *Pierce v. New Hampshire* as overruled; and stated its own conclusions as follows: \* \* \* 'Under our decision in *Bowman v. Chicago & Northwestern Railway*, they (the plaintiffs) had the right to import their beer into that state, and in the view which we have expressed they had the right to sell it, by which act alone it would become mingled in the common mass of property within the state. Up to that point of time, we hold that, IN THE ABSENCE OF CONGRESSIONAL PERMISSION TO DO SO, the state had no power to interfere by seizure.'"

I do not cite the opinion of the dissenting justices to show that their conclusion was correct and that of the majority incorrect. I cite these statements solely to prove that the ground of the decisions in the *Bowman* case, in *Scott v. Donald*, (165 U. S. 58) and *Rhodes v. Iowa* (170 U. S. 412), were distinctly placed upon the assumption that interstate commerce in liquors is a matter that should receive uniform treatment throughout the United States.



CONGRESS HAS CREATED EXCEPTION AS TO  
OKLAHOMA.

Nor do I desire to deny that conclusion, to-wit, that interstate commerce in liquors should receive a uniform treatment throughout the United States, except in so far as I deem it inapplicable to the State of Oklahoma, because of the treaties made by Congress promising strict laws against the introduction of liquor within the Indian Nations, because of the legislation of Congress to the same effect, still standing unrepealed as to the Indian country in the State of Oklahoma, and because of the requirement on the part of the United States that the State of Oklahoma should adopt, at least for the eastern half of it, a strict prohibitory law, containing the very provision that the payment of the special tax to the United States Internal Collector should be *prima facie* evidence of an intent to use the goods for sale.

The view I urge is that, as far as the State of Oklahoma is concerned, Congress, which had the power to do so, has determined that the rule shall *not* be uniform with the other states, and has required of the state the adoption of the laws indicated for the eastern half, thereby, in effect, requiring the adoption of the laws over the whole of the state, and thereby directly has consented, and, in fact, demanded, in effect, that the State of Oklahoma may prevent the delivery of intoxicating liquors to persons who necessarily will

use the goods for the purpose of violating its laws and violating the laws of the United States against the introduction of liquor into the Indian Territory, and the laws of the United States as to the prohibition of liquor in what was formerly the Indian Territory, what is now the Osage Reservation, and all other places in the State of Oklahoma, Indian reservations on the 1st of January, 1906.

#### CONGRESS CAN CONSENT.

Nor can there be any doubt that Congress has the power to give exactly this consent, at least, as far as the State of Oklahoma is concerned, where it had the peculiar duty of protecting the development of the Indians.

In *re Rahrer*, 140 U. S. at 559, it was distinctly said that, in the *Bowman* and the *Leisy* cases, that interstate commerce in liquor should be as all other commodities, upon a uniform national basis, yet, (p. 561) that Congress has, by allowing the police laws of the state to affect the commodities of interstate commerce, before they become commingled with the general mass of property in the state, has thereby adopted a common, uniform rule for all the states.

Nor is it necessary to affirm that the decision of Congress that intoxicating liquors should be upon a uniform basis

for the state is in any way departed from, except where the principle of the duty of the United States to the Indian tribes has required a different application in the State of Oklahoma. *Non constat*, but that in any other state where Congress had the same duty they might not and would not adopt the same rule.

In any event, that Congress has the right to allow a state to apply its police laws to commodities in interstate commerce in a different way than could be done without such consent, appears from *People ex rel Hill v. Hesterberg*, 3 L. R. A. (N. S.) 163 at p. 167; (N. Y. Court of Appeals.)

"That Congress can authorize an exercise of the police power by a state, which, without such authority, would be an unconstitutional interference with commerce, has been expressly decided by the Supreme Court of the United States in *Re Rahrer*."

And further, the Lacey Act, giving such permission as far as game is concerned, was affirmed in that case.

And all of this language is referred to by this court, without dissenting from it, in *New York ex rel Silz v. Hesterberg*, 211 U. S. 29. At page 43, Mr. Justice Day, speaking for this court, said:

"The New York Court of Appeals further held that the so-called Lacey Act \* \* \* relieved the regulation of the objection in question because of the consent of Congress to the passage of such laws concerning such commerce, interstate and foreign, within the principles

upon which the Wilson Act was sustained by this court.  
Re Rahrer, 140 U. S. 545.

"In the aspect in which the game law of New York is now before this court we think it was a valid exertion of the police power, independent of any authorization thereof by the Lacey Act, and we shall therefore not stop to examine the provisions of that act."

In the majority opinion in *Rhodes v. Iowa*, Mr. Justice White quotes and rules upon the language used in *Hall v. De Cuir*, 95 U. S. 485, 488, which language is quoted and relied upon by the respondents in this case as showing the necessity for uniform treatment of interstate commerce. Yet it is precisely this uniform treatment of interstate commerce that Congress has heretofore declared should not exist in requiring of that state the enactment of a prohibitory law to carry out the terms of its own promise to the Indians.

The case of *Foppiano v. Speed*, 199 U. S. 501, while not referring to the language of *Hall v. De Cuir*, yet is a case involving the very facts which were supposed and discussed in that case, and decided that, under the Wilson Act, the very condition of things as far as liquor is concerned, must now take place. In *Hall v. DeCuir*, the illustration was given of whether a passenger cabin set apart for the use of whites without the state, must, when the boat comes within the state, share the accommodation of that cabin with such colored persons as may get on afterward, if the law is enforced.

"It was to meet just such a case that the commercial clause in the Constitution was adopted," says the court (p. 489). "The river Mississippi passes through or along the borders of ten different states, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each state was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship."

This is precisely that condition which Congress has now produced in the Wilson Act, and it was said as to *Foppiano v. Speed*, *supra*, that since the passage of the Wilson Act, that a steamboat navigating the Mississippi River, and engaged in interstate commerce within the states upon that river, is subject to the laws of a state enacting a license fee as a condition to the right of selling intoxicating liquors over the bar while within the limits of the state so enacting such laws.

What I contend for as to Oklahoma is that, under the various treaties and acts of Congress as to Oklahoma, to the Indians in it, Congress meant that when it requires the State of Oklahoma that it should prohibit, at least within its eastern borders, traffic in liquors, it necessarily has the effect that it must prohibit such traffic throughout its whole extent—that Congress meant that it should be given the only practical means of preventing such traffic, to-wit, the right to stop the introduction of liquor interstate, where such in-

troduction necessarily and knowingly to the carriers was for the purpose of violating its prohibitory laws by the use of the goods for sale after being received in the state.

ENABLING ACT COMMANDS STATE TO PROHIBIT  
IMPORTATIONS IN PART, AND ALLOWS PRO-  
HIBITION OF BAD FAITH IMPORTA-  
TIONS IN OTHER PART.

The very language of the Act of Congress is broad enough itself to prevent the introduction of liquor.

The United States had frequently promised the Indians, as shown above, that it would prevent both the introduction and the traffic in liquor within their communities. While the United States has the power to refuse to carry out its promises, yet

"It will not be presumed that the legislative department of the government will likely pass laws which are in conflict with the treaties of the country."

Chinese Exclusion Case, 130 U. S. 600.

To the same effect Mr. Justice Curtis, in his dissenting opinion in *Scott v. Sandford*, 19 How. 629, said:

"By a treaty with a foreign nation, the United States may rightfully stipulate that the Congress will

or will not exercise its legislative power in some particular manner, on some particular subject. Such promises, when made, should be voluntarily kept, with the most scrupulous good faith."

McLean, Justice, in the prevailing opinion of *Worcester v. Georgia*, 6 Pet. 582, said as to treaties with the Indians:

"The question may be asked, is no distinction to be made between a civilized and savage people? Are our Indians to be placed upon a footing with the nations of Europe, with whom we have made treaties? The inquiry is not what station shall now be given to the Indian tribes in our country, but what relation have they sustained to us, since the commencement of our government? We have made treaties with them; and are those treaties to be disregarded on our part, because they were entered into with an uncivilized people? Does this lessen the obligation of such treaties? By entering into them, have we not admitted the power of this people to bind ourselves, and to impose obligations on us?"

P. 583. "After a lapse of more than forty years since treaties with the Indians have been solemnly ratified by the general government, it is too late to deny their binding force. Have the numerous treaties which have been formed with them, and the ratifications by the President and Senate, been nothing more than an idle pageantry?"

P. 593. "So long as treaties and laws remain in full force, and apply to Indian nations, exercising the right of self-government, within the limits of a state, the judicial power can exercise no discretion in refusing to

give effect to those laws; when questions arise under them, unless they shall be deemed unconstitutional."

P. 593. "It will scarcely be doubted by any one, that, so far as the Indians, as distinct communities, have formed a connection with the Federal government, by treaties \* \* \* such connection is political, and is equally binding on both parties. This cannot be questioned, except upon the ground that, in making these treaties, the Federal government has transcended the treaty making power. Such an objection, it is true, has been stated, but it is one of modern invention, which arises out of local circumstances, and is not only opposed to the uniform practice of the government, but also to the letter and spirit of the Constitution."

P. 594. "If it shall be the policy of the government to withdraw its protection from the Indians who reside within the limits of the respective states, and who not only claim the right of self-government, but have uniformly exercised it; the laws and treaties which impose duties and obligations on the general government should be abrogated by the powers competent to do so. So long as those laws and treaties exist, having been formed within the sphere of the Federal powers, they must be respected and enforced by the appropriate organs of the Federal Government."

"The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the *power* to abrogate existed in Congress, and that in a contingency such power might be



availed of from considerations of governmental policy, particularly if consistent with perfect good faith towards the Indians."

Lone Wolf v. Hitchcock, 187 U. S. 566.

If, then, Congress, which had promised to maintain laws against the *introduction*, violated this promise by making no laws against *introduction* when it had the power to do so, was there anything consistent with good faith to the Indian, or was it done for his benefit, or was it in keeping with the governmental policy towards him?

The attitude of the United States toward the Indians has always been that of a faithful protector, regarding them as wards and pupils, as not fully grown children to be exposed to the ravages of whisky.

Mr. Justice Brewer, in Marks v. United States, 161 U. S. 303, said:

"As often affirmed in the decisions of this court, the Indians are, in a certain sense, the wards of the United States, and the legislation of Congress is to be interpreted as intended for their benefit."

Where, then, the word "furnish" can be interpreted for the benefit of the Indian, to cover "introduction," should it not be so interpreted?

The Dick case (208 U. S. 340) clearly recognized that the prohibition of the introduction of liquor into that portion of the state in which the Indians have their allotments,

would be for their benefit. In that case Mr. Justice Harlan, quoted from the case of *United States v. 43 Gallons of Whisky*, to this effect:

“If liquor is injurious to them inside of the reservation, it is equally so outside of it, and why cannot Congress forbid its introduction into a place near by, which they would be likely to frequent?”

It is clear that, under the Act of 1897, introduction is still prohibited by Federal law into the land of an inalienable allotment. By the obligation made through the Dawes Commission, the introduction was to be prohibited from the entire country in which these allotments were. Mr. Justice Harlan, continuing his quotation in the above case, said:

“It is easy to see that the love of liquor would tempt them to stray beyond their borders to obtain it, and that bad white men, knowing this, would carry on the traffic in adjoining localities, rather than venture upon forbidden ground. If Congress has the power, as the case we have last cited decides, to punish the sale of liquor anywhere to an individual member of an Indian tribe, why cannot it also subject to forfeiture liquor introduced for an unlawful purpose into territory in proximity to that where the Indians live? *There is no reason for the distinction*; and, as there can be no divided authority on this subject, our duty to them, our regard for their material and moral well-being, would require us to impose further legislative restrictions should country adjacent to their reservations be used to carry on the liquor traffic with them.”

No clearer statement of the power of Congress and its duty to forbid the *introduction* of liquor anywhere in

the Indian Territory, where inalienable allotments exist, could be sought or found.

As to the constrution of the words "accept the terms and conditions," as contained in the ordinance of the Constitutional Convention of Oklahoma, of April 22, 1907, and the words "no existing rights shall be affected by the change in the form of government, but all shall continue as if no change in the form of government had taken place," in Section 1 of the schedule to the Oklahoma Constitution, these being constitutional provisions, they are to be construed broadly.

"The true spirit of constitutional interpretation in both directions is to give full, liberal construction of the language, aiming ever to show fidelity to the spirit and purpose"

Mr. Justice Brewer, in *Fairbanks v. United States*, 181 U. S. 287.

Mr. Justice Trimble, dissenting in *Ogden v. Saunders*, 12 Wheat. 315, said:

" \* \* \* in construing an instrument of so much solemnity and importance, (as the Constitution) effect should be given, if possible, to every word. No expression should be regarded as a useless expletive; nor should it be supposed, without the most urgent necessity, that the illustrious framers of that instrument had, from ignorance or inattention, used different words, which are, in effect, merely tautologous."

Chief Justice Taney, in *Holmes v. Jennison*, 14 Pet. 507, following the same, though saying:

"In extending the Constitution of the United States, every word must have its true force and appropriate meaning; for it is evident from the whole instrument that no word was unnecessarily used or needlessly added."

The same theory should be followed in construing the Constitution of the State of Oklahoma, and it must not be supposed that anything formerly within the terms and conditions of the Enabling Act was not accepted, or that anything formerly for the benefit or well-being of the Indian, guaranteed to him by repeated treaties, was not a right which was saved to him by this clause.

The same liberal interpretation should be given to Sec. 2 of the schedule that "all laws in force in the Territory of Oklahoma" were to be extended throughout the state. There was a law in force in the Territory of Oklahoma prohibiting the *introduction* of liquor into the Indian country. It was the law of 1897 which, under its terms, "Indian country" included all land held in trust by the government or inalienable in the hands of the allottee. This law was in force in Oklahoma Territory wherever there was Indian country, and under this definition are included the Osage Nation, the Missouri, Otoe, Ponca and other Indian reservations and tribes. It is applicable to the State of Oklahoma to all that portion thereof where there is land held in trust by the gov-

ernment for the Indians, or allotments which are now inalienable. That law was not inconsistent with the Constitution; therefore, it was extended over the State of Oklahoma.

In *Permoli v. First Municipality*, 3rd How. 609, in the opinion of the court, it is said, in regard to prior acts of Congress, which, by the admission of the Territory of Orleans into the Union as the State of Louisiana, ceased to exist, except where adopted by the state, that:

"So far as they confer political rights and secure civil and religious liberties (which are political rights), the laws of Congress were all superseded by the State Constitution; nor is any part of them in force, *unless they were adopted by the Constitution of Louisiana.*"

And this theory was again sustained in *Escanaba Co. v. Chicago*, 107 U. S. 678, at page 688. Mr. Justice Field says:

"Whatever the limitations upon her (that is, the Territory of Illinois) powers as government whilst in a territorial condition, whether from the Ordinance of 1787 or the legislation of Congress, it ceased to have any operative force, except as *voluntarily adopted by her*, after she became a state of the Union."

This distinctly asserts that acts of Congress can have binding force when readopted by reference or otherwise by a state.

Where Congress provides that the State of Oklahoma shall legislate against "the manufacture, sale, barter, giving

away or otherwise furnishing, except as hereinafter provided, of intoxicating liquors," and the only methods thereafter provided are the sale for medicinal purposes, denaturized alcohol for industrial purposes, alcohol for scientific purposes and the sale of liquors to an apothecary, to be used in compounding of prescriptions or medicines, will not the words "or otherwise furnishing" be construed to have been used with the intention of stating as broad a prohibition as might by any possibility come to pass, and be a recognition of the fact that Congress recognized that it was unable to anticipate all the devices that might be resorted to to supply the Indians with liquor. "Furnish" is the equivalent to "supply." If the word "supply" had been used, it would include within it the delivery from an interstate carrier as well as the delivery from an intrastate carrier, or manufacturer or seller; and as the function of Congress was to prohibit the introduction, the word "furnish" being incapable of carrying the meaning of "introduction" by carrier, as well as "supply" from a manufacturer or seller, we conceive that the courts should not stand upon the narrow interpretation of words, but should hold that the object of the act being for the protection of the Indians, that prevention of supply by carrier to one who has paid the special revenue tax, and intends to use the goods for sale, and whose supply by the carrier necessarily aids him in such violation, that these acts are within the consent and command of Congress to the

state, and that the state has the duty and the right to prevent such delivery by injunction, as attempted in this action.

Respectfully submitted,

CHARLES WEST,

*Attorney General of the State of Oklahoma.*

IN THE  
SUPREME COURT

OF THE  
UNITED STATES

October Term, 1910

THE STATE OF OKLAHOMA

*Complainant*

vs.  
THE ATCHAFALAYA, TOWERS AND  
SANTA FE RAILWAY COMPANY

*Respondent*

No. 15  
ORIGINAL

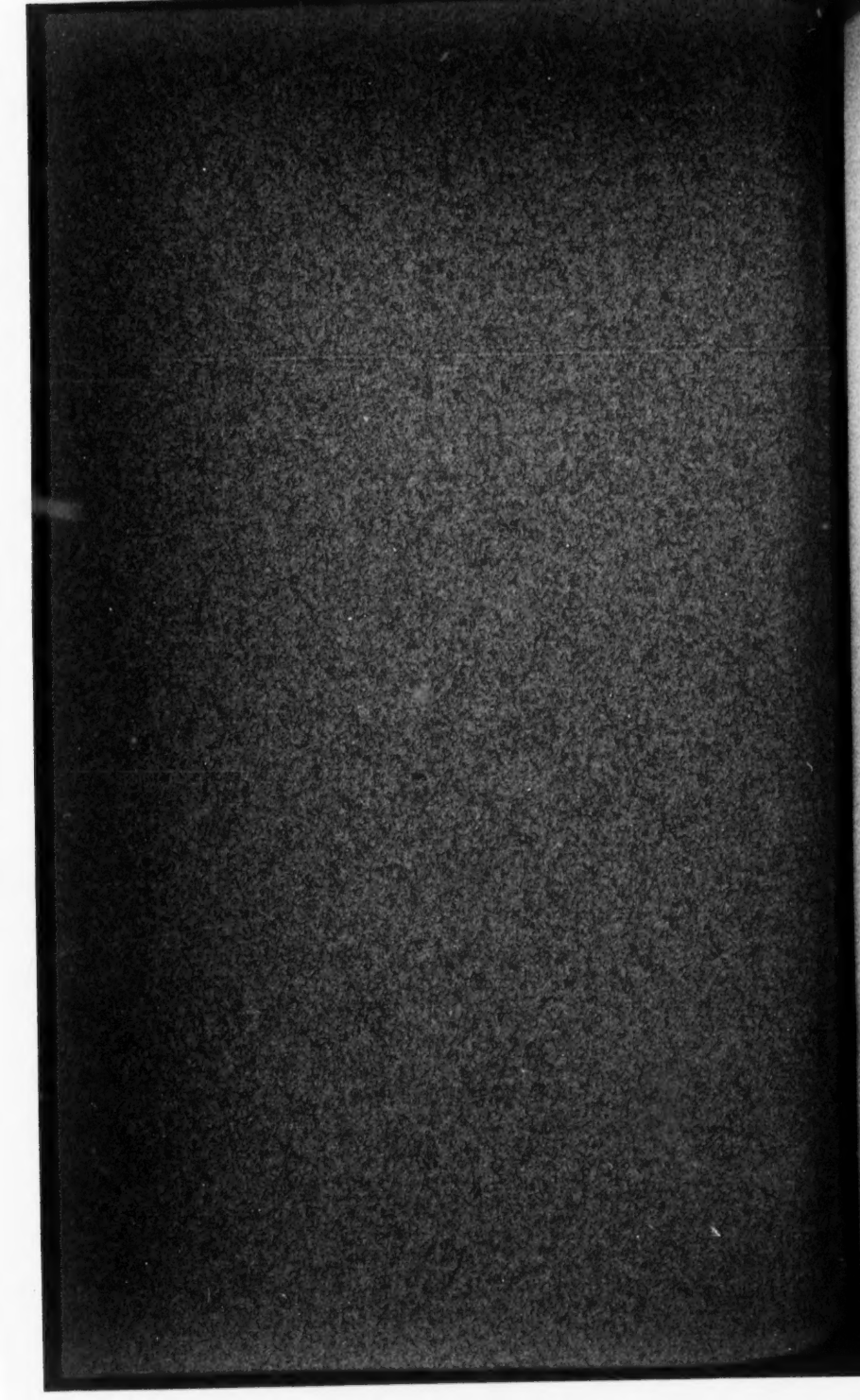
Supplementary Brief by Complainant

CHAS. W. HUNT

Attorney General of Oklahoma

For the State





IN THE  
SUPREME COURT  
OF THE  
UNITED STATES

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October Term, 1910

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THE STATE OF OKLAHOMA

*Complainant*

vs.

THE ATCHISON, TOPEKA AND  
SANTA FE RAILWAY COMPANY  
et al

*Respondents*

No. 14  
ORIGINAL

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SUPPLEMENTARY BRIEF BY COMPLAINANT.

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AS TO PARTIES.

The objection is made that the various persons having paid the special license tax are necessary parties defendant, and it is stated that these are citizens of Oklahoma (p. 2, Reply Brief, A. T. & S. F.). The bill does not say they are citizens of Oklahoma, and how the court is to have this knowledge is not apparent. In fact, the complainant does

not seek any relief as against such persons. What it seeks is that the respondents be restrained from introducing or otherwise furnishing intoxicating liquor to any or all persons who have paid the special tax required by the United States of liquor dealers. If it is necessary to join one of these persons, it is necessary to join them all, and as the list of licensed persons daily changes, no sooner could the information as to the personnel of the list be obtained than it would be useless. Further, if it were necessary to join those who have licenses, it would be equally necessary to join all those who might acquire licenses in the future. The matter is entirely concluded by the decision of this court in *Cherokee v. Hitchcock*, 187 U. S. at p. 300, where the similar objection was made—that together with the Secretary of the Interior all those persons were not joined who were applicants for leases in the Cherokee Nation, and this court, speaking through them Mr. Justice White, said:

“As the bill assailed generally the want of power in the Secretary of the Interior to execute leases \* \* \* and refers to the application pending for the lease made by the Cherokee Oil & Gas Company, as manifesting but a particular instance in which it was charged that the Secretary of the Interior might exercise the power conferred by the statute, the corporation named was not an indispensable party to the bill.”

Upon the theory presented by the complainant, the respondents are tort-feasors in Oklahoma. If these other parties join with them they are tort-feasors, and the rule is fa-

(3)

miliar that the complainant does not have to join in his action all those who participate in the tort. Furthermore, only those are indispensable parties who may be affected by the decree, and at page three of the reply brief of the A. T. & S. F. it is especially stated that the decree in this action would not be binding as against these other persons. These persons, therefore, are not parties, because:

First. They are not affected by the decree sought.

Second. Because they only have a contingent interest in the result of the suit.

Third. Because it would be impossible to bring in all such parties.

The possessors of licenses are no more necessary parties than are the shippers or would-be shippers who do or desire to ship liquor into the Indian country.

#### 180 FEDERAL 1006 OVERLOOKS THE CONTROLLING CASES IN THIS COURT.

It is unnecessary to examine any of the cases cited by respondents, except that of *United States, ex rel., Friedman v. United States Express Company*, 180 Fed. 1006. None of the others attempt to consider the questions growing out

of the various Indian treaties. Even in that case, the treaties seem to have been inadequately presented to Judge Rogers. At page 1014, he says:

"The United States reserved no power, in express terms, of sole and exclusive jurisdiction over the Indian Territory or the Indians."

yet this is a manifest error.

Section 1, Enabling Act (34 Stat. 267) provided:

"That nothing contained in said Constitution shall be construed to limit or impair the rights of persons or property pertaining to the Indians of said territories, (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property or other rights by treaties, agreement, law or otherwise, which it would have been competent to make if this Act had never been passed."

Further, Judge Rogers does not seem to have considered at all:

United States v. 43 Gallons, 93 U. S. 188;  
United States v. 43 Gallons, 108 U. S. 491.

Yet these are the controlling cases.

93 U. S. 188,

and

108 U. S. 491

CONTROL THIS CASE.

In the latter, two principles are laid down by Mr. Justice Field which dispose of this case.

(1) He said as to the repeal by implication of the acts against the introduction of whisky into the Indian country:

"It would require very clear expressions in any general legislation to authorize the inference that Congress purposed to depart from its long established policy in regard to a matter of so vital importance to the peace and the material and moral well being of these wards of the nation."

(2) As to the proposition that laws against sale and barter would be a sufficient protection, he said:

"Once allow their (liquors) indiscriminate or general introduction and the law would be evaded without possibility of detection."

*39 U. S. 188, U. S. v. 43 GALLONS OF WHISKY,  
DECIDED THREE PROPOSITIONS.*

1. Congress may prohibit introduction of liquor into Indian country and its *proximity*.
2. A treaty to that effect is binding until clearly and expressly repealed.
3. Even in an organized county in a state.

The erection of a state out of a territory does not terminate Indian country.

U. S. v. Bailey, 1 McLean, 235;

U. S. v. Cisna, 1 McLean, 254;

U. S. v. Ward, 1 Woolw. C. C. 19, 21.

It is immaterial to the court what is the percent of In-

dian population; that is a consideration addressed to the discretion of Congress.

"Power of Congress not affected by the magnitude of the traffic, or the extent of the intercourse."

Per Davis, J., U. S. v. 43 Gals., *supra*.

As discussing the sovereign rights of Minnesota, Mr. Justice Davis pointed out that it was benefited, and that in any event the state itself, through its officers, was not claiming injury on this account.

He said:

"It is not easy to see how it infringes upon the position of equality which Minnesota holds with the other states. The principle that federal jurisdiction must be everywhere the same, under the same circumstances, has not been departed from. The fact that the ceded territory is within the limits of Minnesota is a mere incident, for the Act of Congress imputed into the treaty applies alike to all Indian tribes occupying a particular country, whether within or without state lines. Based as it is exclusively on the federal authority over the subject matter, there is no disturbance of the principle of state equality."

In U. S. v. Halliday, 3 Wall. 409, this court

"held that the power of Congress to legislate commerce with the Indian tribes was, in its nature, general, and not confined to any locality; that its existence necessarily implied the right to exercise it, whenever there was a subject to act upon, although within the limits of a state, and that it extended to the regulation of commerce with the individual members of such tribes."

Davis, J., in 93 U. S. p. 195.

Continuing, he said:

"\* \* \* If liquor is injurious to them inside of a reservation, it is equally so outside of it, and why cannot Congress forbid its introduction into a place near by, which they would be likely to frequent? \* \* \*

"If Congress has the power, as the case we have last cited decides, to punish the sale of liquor anywhere to an individual member of an Indian tribe, why cannot it also subject to forfeiture liquor introduced for an unlawful purpose into territory in proximity to that where the Indians live. There is no reason for the distinction; and, as there can be no divided authority on the subject, our duty to them, our regard for their material and moral well-being, would require us to impose further legislative restrictions, should country adjacent to their reservations be used to carry on the liquor traffic with them."

Congress had the power to define Indian country. The treaty defined in what limits Congress agreed whisky should not be brought.

"The power to define originally the 'Indian country,' within which the unlicensed introduction and sale of liquors were prohibited, necessarily includes that of enlarging the prohibited boundaries, whenever, in the opinion of Congress, the interests of Indian intercourse and trade will be best subserved."

Per Davis, J., *supra*.

No legislation is required to put a treaty in force. It must become a rule of action if the contracting parties had power to incorporate it in the treaty.



## HAVE THE TREATIES BEEN REPEALED?

If not repealed, the prohibition of the introduction of intoxicating liquor is in force today wherever it has ever been in force.

## CHOCTAWS AND CHICKASAWS.

By Article 12 of the treaty with the Choctaws, made October 18, 1820, at Doak's Stand, near the Nachez Road, (7 Stat. 213, Kappler L. & T. vol. 2, p. 135) it was provided:

"In order to promote industry and sobriety amongst all classes of the Red people, in this nation, but particularly the poor, it is further provided by the parties, that the agent appointed to reside here shall be, and he is hereby, vested with full power to seize and confiscate all the whisky which may be introduced into said nation, except that used at public stands or that brought in by permit of the agent, or the principal Chiefs of the three districts."

The country to which that stipulation is applicable is defined in Article 2, as follows:

"Art. 2. For and in consideration of the foregoing cession on the part of the Choctaw Nation, and in part satisfaction for the same, the Commissioners of the United States, in behalf of said states, do hereby cede

to said nation a tract of country west of the Mississippi River, situate between the Arkansas and Red Rivers, and bounded as follows: Beginning on the Arkansas River, where the lower boundary line of the Cherokee strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River three miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning."

The treaty at Doak's Stand was referred to and confirmed by the treaty made January 20, 1825, at Washington. (7 Stat. 234, 2 Kappler L. & T. p. 149.)

And in turn the matter was finally consummated at Dancing Rabbit Creek, September 27, 1830 (7 Stat. 333, 2 Kappler L. & T. p. 221), as follows:

"The United States, under a grant specially to be made by the President of the U. S., shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian Fork; if in the limits of the United States, or to those limits; thence due south to Red River and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeable to the treaty made and concluded at Washington City in the year 1825. The grant to be executed so soon as the present treaty shall be ratified."

CHEROKEES.

Treaty with the Cherokees of July 19, 1866, at Washington (14 Stat. 799), at Article XXVII, p. 806, provides:

“\* \* \* But no sutler or other person connected therewith, either in or out of the military organization shall be permitted to introduce any spirituous, vinous or malt liquors into the Cherokee Nation, except the medical department proper, and by them for strictly medical purposes. \* \* \*”

Article XI, p. 801, provided for the grant of right of way to any company authorized by Congress, but \* \* \* that the companies' agents, employes and laborers \* \* \*

*“shall at all times (be) subject to the Indian intercourse laws, now or which may hereafter be enacted and be in force in the Cherokee Nation.”*

As to what domain this stipulation covers appears from this.

The lands of the Western Cherokees were defined by the treaty made May 6, 1828, at Washington (7 Stat. 311, 2 Kappler L. & T. p. 206), as follows:

“Article 2. The United States agree to possess the Cherokees, and to guarantee to them forever, and that guarantee is hereby solemnly pledged, of seven millions of acres of land to be bounded as follows, viz.: Com-

mening at that point on Arkansas River where the eastern boundary line strikes said river, and running thence with the western line of Arkansas, as defined in the foregoing article, to the southwest corner of Missouri, and thence with the western boundary of Missouri till it crosses the waters of Neosho, generally called Grand River, thence due west to a point from which a due south course will strike the present northwest corner of Arkansas Territory, thence continuing due south, on and with the present boundary line of the territory, to the main branch of Arkansas River, thence down said river to its junction with the Canadian River, and thence up and between the said rivers Arkansas and Canadian, to a point at which a line running north and south, from river to river, will give the aforesaid seven millions of acres thus provided for and bounded, the United States further guarantee to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country lying west of the western boundary of the above described limits, and as far west as the sovereignty of the United States and their right of soil extend."

This treaty was ratified with the following proviso:

"Provided, nevertheless, that the said convention shall not be so construed as to extend the northern boundary of the 'Perpetual Outlet West,' provided for and guaranteed in the second article of said convention, north of the thirty-sixth degree of north latitude, or so as to interfere with the lands assigned, or to be assigned, west of the Mississippi River, to the Creek Indians who have emigrated, or may emigrate, from the states of Georgia and Alabama, under the provisions of any treaty or treaties heretofore concluded between the United States and the Creek tribe of Indians; and provided further, that nothing in said convention shall be construed to cede or assign to the Cherokees any lands heretofore ceded or

assigned to any tribe or tribes of Indians, by any treaty now existing and in force, with any such tribe or tribes."

(See Creek Treaty Ft. Gibson, Feb. 14, 1833, 7 Stat. 417, 2 Kapplers, p. 286.)

Article 1 was as follows:

"The western boundary of Arkansas shall be, and the same is, hereby defined, viz.: A line shall be run, commencing on Red River, at the point where the eastern Choctaw line strikes said river, and run due north with said line to the River Arkansas, thence in a direct line to the southwest corner of Missouri."

The tenth article provided (7 Stat. 335, 2 Kappler L. & T. p. 223):

"No person shall \* \* \* The U. S. shall be particularly obliged to assist to prevent ardent spirits from being introduced into the nation."

Also the treaty of April 28, 1866, at Washington, with the Choctaws and Chickasaws (14 Stat. 769), at Article VI, provided a grant of right of way (p. 771) to any company or companies authorized by Congress. \* \* \*

"But such railroad \* \* \* all its agents and employes shall be subject to the laws of the United States relating to intercourse with the Indian tribes. \* \* \*"

See Article XXXIX, p. 779, requiring license from nation to trade therein.

And Article XLV, p. 779, keeping in force all former treaty rights or stipulations.

IN 1830 THE CHOCTAWS AND CHEROKEES COVERED THE WHOLE OF THE PRESENT STATE OF OKLAHOMA.

All other Indian tribes placed there were put upon cessions from these two.

CREEKS.

With the Creeks, by the Act of March 1, 1901, (31 Stat. 861) at Section 43, p. 872, it was provided:

*"The United States agrees to maintain strict laws in said nation against the introduction, sale, barter or giving away of liquors or intoxicants of any kind whatsoever."*

That act was a ratification of an agreement made with Creeks or Muskogees.

The limits of their nation appear from this.

The Creeks were removed west of the Mississippi under Act of May 28, 1830, 4 Stat. p. 411, Sec. 148 of Laws of 1830, and treaty of Washington, March 24, 1832, 7 Stat. 3668, pursuant thereto, and treaty of Fort Gibson, February 14,

1833 (7 Stat. 417, 2 Kappler L. & T. p. 285-7), defined the following territory: Article II.

"Beginning at the mouth of the North Fork of the Canadian River, and run northerly four miles, thence running a straight line so as to meet a line drawn from the south bank of the Arkansas River opposite to the east or lower bank of Grand River, at its junction with the Arkansas, and which runs a course south, 44 degrees west, one mile, to a post placed in the ground; thence along said line to the Arkansas, and up the same and the Verdigris River to where the old territorial line crosses it; thence along said line north to a point twenty-five miles from the Arkansas River where the old territorial line crosses the same; thence down said river to the place of beginning. The lines, hereby defining the country of the Muskogee Indians on the north and east, bound the country of the Cherokees along these courses, as settled by the treaty concluded this day between the United States and that tribe."

Treaty of June 14, 1866, at Washington, (14 Stat. 785, 2 Kappler L. & T. 716) provides for a right of way to any railroad company authorized by the United States (p. 786)

"\* \* \* but said railroad company, together with all its agents and employes, shall be subject to the laws of the United States relating to intercourse with Indian tribes, and also to such rules and regulations as may be prescribed by the Secretary of the Interior for that purpose. \* \* \*

## SEMINOLES

The Act of July 1, 1898, to ratify the agreement of the Daws Commission with the *Seminole Tribe* (30 Stat. 567), at p. 568, provides:

*"The United States agrees to maintain strict laws in the Seminole country against the introduction, sale, barter or giving away of intoxicants of any kind or quality."*

The original Seminole Reservation in the Indian Territory appears from the terms of Article I of the Treaty of August 7, 1856. Article II defines the Creek Nation.

See 11 Stat. 699, 2 Kappler L. & T. p. 570.

But their boundaries were afterwards modified and are described by the Treaty of March 21, 1866, at Washington, 14 Stat. 755, 2 Kappler L. & T. p. 696, as follows:

*"Beginning on Canadian River where the line dividing the Creek lands according to the terms of their sale to the United States by their treaty of February 6, 1866, following said line due north to where said line crosses the North Fork of the Canadian River; thence up said North Fork of the Canadian River a distance sufficient to make two hundred thousand acres by running due south to the Canadian River; thence down said Canadian River to the place of beginning."*



POTTAWATOMIES, SHAWNEES, CHEYENNES,  
ARAPAHOES.

The *Pottawatomie Indians* of the Indian Territory relinquished their lands March 3, 1891 (26 Stat. 1016), upon condition that they were to receive allotments under the Act of February 8, 1887, (24 Stat. 388) which allotments were confirmed by the Act of cession (26 Stat. 1017).

The *Absentee Shawnees*, likewise, by the same act (26 Stat. 1019) ceded their lands in the Indian Territory, their allotments to be made under 24 Stat. 388. (26 Stat. 1020.)

The *Cheyennes and Arapahoes*, likewise by that act (26 Stat. 1022) ceded their lands, a portion (Article I) ceded absolutely, the other portion (Article II) subject to allotment, (this covered all the land ceded from the Creeks by Treaty of June 14, 1866, and from the Seminoles by Treaty of March 21, 1866) with certain exceptions, (Article IV) p. 1023, notably the land claimed by the Wichitas, under Act of February 8, 1887 (26 Stat. 1024, Article VI).

This act extinguished the claim of the Choctaws and Chickasaws to lands south of the Canadian River (p. 1025, Sec. 15.)

It is to be noted that none of these Indians are within the description of Section 8 of the Act of February 8, 1887, as originally adopted, but "were Indians in the Indian Territory" under the description of the amendatory Act of March 3, 1901, and therefore come within the last sentence of Sec. 6 of that Act, that is, are not subject to the laws of the Territory of Oklahoma, but are citizens of the United States.

#### CHEROKEE OUTLET, TONKAWAS, PAWNEES.

The purchase of the *Cherokee Outlet* was ratified by Act of Congress of March 3, 1893 (27 Stat. 641) subject to the allotments provided for in the agreement. (27 Stat. 643.)

The lands of the *Tonkawas* and *Pawnees* were likewise ceded by the same act, subject to allotment.

The act does not by any express words give over the authority of the United States.

But the Act of February 28, 1891, (26 Stat. 796) amended the Act of February 8, 1887, by expressly excluding from its provisions the "Cherokee Outlet," and the special exception was contained in the concluding words of this act, that neither the last section, nor any agreements made under it, should be construed to limit the authority of the United

States (p. 646). And Section 15 provided for the Commission to treat with and make allotments for the Cherokees, Creeks, Choctaws, Chickasaws and Seminoles, all of whom had always been outside of the first sentence of Section 6 of the Act of February 8, 1887.

WICHITAS, COMANCHES, KIWAS, ARAPAHOS,  
QUAPAWS.

By Act of March 2, 1895 (28 Stat. 895) the *Wichitas* ceded their lands in the Indian Territory (Article I) subject to allotment under the terms of Act of February 8, 1887, (Article IV, p. 896).

The same act (p. 907) ratified the allotments in the Indian Territory to the *Quapaw Indians* without mention of any change in the status of the Indian to whom land was so allotted.

By Act of June 6, 1900, (31 Stat. 676) the *Comanches*, *Kiwas* and *Arapahoes* ceded their lands subject to allotment under Act of February 8, 1887, (p. 678, Article V) as amended February 28, 1891, (26 Stat. 794.)

All of these Indians are described as Indians in the Indian Territory, are within the amendment of March 3, 1893, are therefore as Bob Celestine, not as Heff and Butler.

## OSAGE NATION.

As to the *Osages*, frequent mention is made of their lands in the Enabling Act, and the Oklahoma Constitution, as a "*Reservation*." In *Pickett v. U. S.* (218 U. S. 266) Mr. Justice Lurton specifically refers to the reservation as "*Indian Country*." The lands of the *Osages* are not to be deeded to them as individuals, executed by their principal chief, until twenty-five years after January 1, 1907. (34 Stat. sec. 5, p. 544, Sec. 8, p. 545.)

Thus it is found there is Indian country in the following: The whole of the eastern portion of the state, viz., the lands of the Five Civilized Tribes, also the Osage Nation, the "Cherokee Outlet," the "Cheyenne and Arapahoe Country," the "Kiowa and Comanche Country," the "Pottawatomie," the lands of the Tonkawas and Pawnees, in fact all Oklahoma Territory except the Public Land Strip (Texas, Beaver and Cimarron Counties) the three counties formed out of Greer County (formerly Texas) (Jackson, Harmon and Greer Counties). That is, of seventy-seven counties now existing, six contain, so far as I can discover, no "Indian country"; all the other seventy-one do contain Indian country, some in greater or less degree; some, as Osage County,

being entirely Indian country, still a reservation; some, as the western counties of the Cherokee Outlet, containing very few allotments.

If intoxicating liquor is prohibited from Indian country, how unreasonable in this tangled mass of diversified conditions to require of interstate carriers transportation of liquor to all places not Indian country, and forbid it wherever there is Indian country.

Is it not more reasonable to suppose that introduction of liquor being prohibited into all places reservations (inalienable allotments are reservations) January 1, 1906, that consent was meant to be given to exclude it entirely?

That Congress conceived that it had power to prohibit introduction as well as sale, even after statehood, and that it was not against its policy to do so, appears from this fact.

The Act of June 16, 1906, (Oklahoma Enabling Act) also provided for the admission of Arizona and New Mexico as a state.

In providing protection to the Indians therein, in that Act, Congress did not use the phrase as used for Oklahoma of (p. 269):

“the manufacture, sale, barter, giving away, or otherwise furnishing \* \* \* within those parts, etc.”

but (p. 279) used the phrase:

“And the sale, barter, or giving of intoxicating liquors to Indians are forever prohibited.”

It must be supposed that “otherwise furnishing \* \* \* within those parts” has some different meaning from the prohibition, not to a specific place, but to “sale, barter or giving” to a specified people, viz, Indians contained in the provision for Arizona and New Mexico.

That there was understood to be a difference appears from the Act of June 22, 1910, the present Enabling Act for Arizona and New Mexico.

As to New Mexico, it is therein provided, (36 Stat. 558):

“and the sale, barter, or giving of intoxicating liquors to Indians, and the introduction of liquors into Indian Country, which term shall also include all lands now owned or occupied by the Pueblo Indians of New Mexico, are forever prohibited.”

That “introduction into Indian Country” is different from “giving to Indians,” is too apparent. Is not “otherwise furnishing within” Indian Country equivalent thus to “introduction into Indian Country,” and separate and distinct from “manufacture, sale, barter, giving away” to any person?

Congress recognized that the protection of Indians was not in New Mexico the problem or duty it was in

Oklahoma. As to the latter, every kind of prohibition was intended for the Indian Territory and Reservations existing January 1st, 1906, as to New Mexico giving to Indians, (whether under the control of the Government as Bob Celestine, or no longer under that control as Heff and Butler) was enough taken together with the exclusion of liquor from Indian Country.

As to Arizona, (p. 569) a provision of the same terms was made:

“and the sale, barter, or giving of intoxicating liquors to Indians, and the introduction of liquors into Indian Country, are forever prohibited.”

#### ORIGIN OF OKLAHOMA,

Article VIII of the treaty with the Choctaws and Chickasaws of April 28, 1866, (14 Stat. 772) provided for a unique government in the “Indian” territory, and Section 10 thereof, (p. 773), established the superintendent of Indian Affairs as the executive of said territory, with the title “Governor of the Territory of Oklahoma.”

This, so far as I know, is the germ of the present State.

## BEGINNINGS OF OKLAHOMA TERRITORY.

The lands ceded the United States by the Creeks by Treaty of August 7, 1856, (11 Stat. 699), Article I for the Seminoles, by Article III of Treaty of March 21, 1866, were all of them ceded to the United States, (14 Stat. 756), and by Act of March 2, 1889, Section 13, (25 Stat. 1005), restored to the public domain to be disposed of to home-steaders and for schools as that Act provided.

Also the lands ceded from the Creeks by treaty of January 19, 1889, (25 Stat. 757) were to be disposed of in the same manner, (last paragraph Section 13, 25 Stat. 1005.)

Of these cessions, that of the Seminoles (14 Stat. 756) was said to be "in compliance with the desire of the United States to locate other Indians and freedmen thereon." That of the Creeks (14 Stat. 786) was in the same words.

*Nothing in the treaties of cession or the Acts opening to settlement indicates any intention to raise the bar against the introduction or disposition of liquor.*

Section 14 of the Act of March 2, 1889, created the "Daws Commission."



“to negotiate with the Cherokee Indians and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory”

in order that said lands so secured should become a part of the public domain, to be settled upon under the homestead laws after proclamation by the President.

#### ORGANIC ACT OF OKLAHOMA TERRITORY.

The Act of May 2, 1890, (26 Stat. 81, the so-called Organic Act of the Territory of Oklahoma) established and created the Territory of Oklahoma carrying forward the name and thought of the Treaty of April 28, 1866, with the Choctaws and Chickasaws.

It created Oklahoma Territory out of

*“all that portion of the United States now known as Indian Territory, except so much of the same as is actually occupied by the Five Civilized Tribes, and the Indian tribes within the Quapaw Indian Agency, and except the unoccupied part of the Cherokee Outlet, together with that portion of the United States known as the Public Land Strip.”*

The southern half of this was within the Choctaw Nation of September 27, 1830, and the promise to exclude liquor from it (7 Stat. 335), the northern half with-

in Cherokee Nation of May 6, 1828, and the promise to exclude liquor from it, made July 19, 1866. (Note that this promise is simultaneous with the agreement by the Cherokees to settle friendly Indians in their domain.)

*All of it is within the "Indian Country" as defined by Act of June 30, 1834, as amended by Act of March 15, 1864, (4 Stat. 732, 13 Stat. 29). (Note that this Act is prior to the new definition of "Indian Country" contained in Act of January 30, 1897. (29 Stat. 506.) ALL OF IT WAS TERMED "INDIAN TERRITORY."*

To these portions of the *Indian Country* there was added the Public Land Strip. (p. 82.)

And it was provided that when the interests of the Cherokees in the outlet should become extinguished, it should be added to the Oklahoma Territory, as also

"any other lands within the Indian Territory  
\* \* \* whenever the tribe owning such lands shall signify to the President of the United States in legal manner its assent."

As if to warn us that none of the promises made by Congress were meant to be violated, it is expressly provided:

"That nothing in this Act shall be construed to impair any right now pertaining to any Indian or Indian tribe in said Territory under the laws, agreements, and treaties of the United States, or to im-

pair the rights of person or property pertaining to said Indians, or to effect the authority of the Government of the United States to make any regulation or to make any law respecting said Indians, their lands, property, or other rights which it would have been competent to make or enact if this Act had not been passed."

Further, (Sec. 11), it is provided for the purpose of facilitating temporary government, that certain Chapters and provisions of the laws of Nebraska in force November 1st, 1889, should be in force in Oklahoma Territory, until after the adjournment of the first session of the legislative assembly, (p. 87) which had previously in the same Act been granted (Sec. 6, p. 84) power to extend to all *rightful subjects of legislation not inconsistent with the Constitution and laws of the United States,*" etc.

The Nebraska Chapter on liquors, Chapter 50, was specifically put in force, except these significant words were used: "*But No Licenses Shall be Issued Under This Chapter.*"

As Act of March 15, 1864, (13 Stat. 29) under 93 U. S. 188 and 108 U. S. 491 was in force in this Indian country legislation to license the sale of liquor would be *inconsistent with the laws of the United States*, unless there is some express or implied repeal as to Oklahoma Territory, but the special wording of the provision putting in force the Nebraska Statute excludes any notion of repeal.

For Chapter 50 of the Laws of Nebraska, pp. 413, et seq, Compiled Statutes of Nebraska (Annotated) 1885, provide in Sections 1, 2, 3, 4, 5, 6, 7, for the granting of licenses to sell intoxicating liquor, and provide a procedure therefor. These are the provisions expressly excluded. Sections 8 and 9 provide a law against the sale of liquor to minors, Section 9 to Indian, insane or drunkard, Sections 11 and 12 against disposing without a license, Section 13 for disposing of adulterated liquors, Section 14 against sale on election day, etc. None of them to the end of the chapter (Sections 14 to 30), when the intent to grant any license is excluded, can even amount to a shadow of an implied repeal.

There is, therefore, nothing indicating any intention on the part of Congress to change its policy to exclude liquors both from the Indian Territory and Oklahoma Territory, except the far-fetched implication of a change in the command to the state to enact a prohibition law for what was still Indian Territory, or an Indian Reservation January 1, 1906.

There is no argument to be drawn from the collection of special license taxes.

U. S. v. 43 Gallons, 108 U. S. 491.

These were collected in both territories before statehood, as all over the state now. Likewise, that the Enabling Act recognizes that special taxes may be so collected is immaterial;

if the possession of the license is no defense, a provision which recognizes its possession, is no more so.

There was thus no essential need in a new declaration against introduction. The state could not prohibit introduction without Congressional consent.

Thus the usual form of words prohibiting "introduction, sale, barter, or otherwise disposing" is changed in the Enabling Act to "manufacture, sale, barter or otherwise *furnishing*," because "furnish" is large enough to include both "introduction" and "dispose."

The state was thus commanded to prevent so much of the "furnishing" as lay within its power for the Indian Territory, Osage Reservation, and other reservations existing January 1, 1906 (which comprise all the allotments) and without express repeal we cannot suppose introduction for so much of the western portion as contains Indian country, i. e., inalienable allotments, is repealed. As to it, if the indiscriminate introduction there is allowed, the law will be evaded beyond a possibility of detection, (Mr. Justice Field, 108 U. S. 491) thus, at least to persons holding special tax or license receipts, there can be no introduction.

Respectfully,

CHARLES WEST,  
*Attorney General of Oklahoma,*  
For the State.

"EXHIBIT A."

Guthrie, Okla., February 11, 1911.

Commissioner of Indian Affairs,

Department of Interior, Washington, D. C.

Please wire answer, my expense, to my letter sixth instant, what counties in Oklahoma Territory ever had Indian allotments, and which still have.

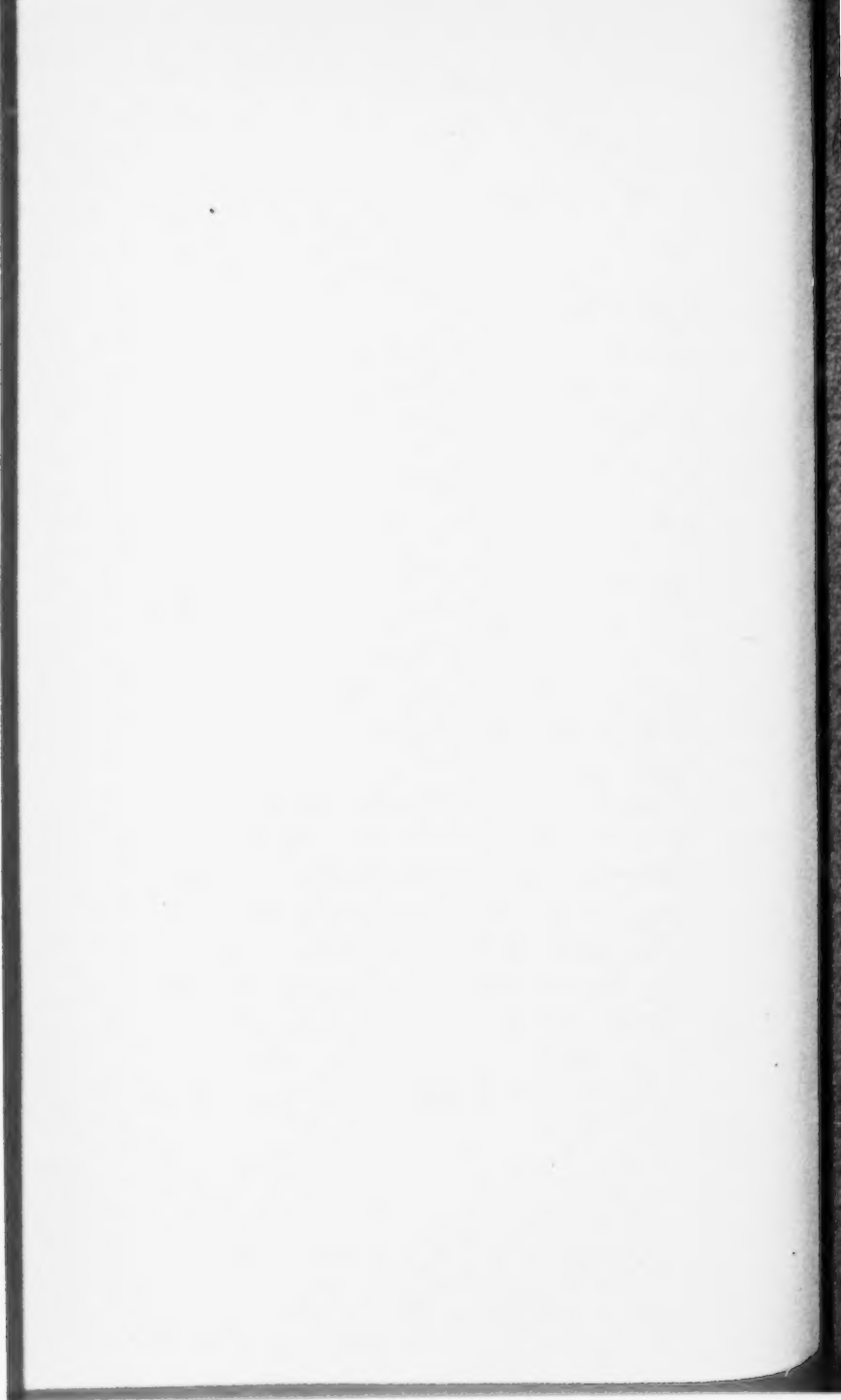
CHARLES WEST,  
*Attorney General.*

Washington, February 11, 1911.

HON CHARLES WEST, Attorney General,  
Oklahoma City, Okla.

Your telegram of February eleventh. Allotments have been made in Kay, Noble, Pawnee, Osage, Payne, Logan, Lincoln, Oklahoma, Cleveland, Pottawatomie, Kingfisher, Canadian, Blaine, Dewey, Custer, Roger Mills, Ellis, Beckham, Washita, Caddo, Kiowa, Grady, Comanche, Stephens, Jefferson and Tillman Counties. Cherokee Indians have lands in Grant, Garfield and Alfalfa Counties. Letter follows.

FAULKE,  
*Second Assistant Commissioner.*





IN THE

**SUPREME COURT OF THE UNITED STATES**

October Term, 1910.

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**Original, No. 14**

---

**STATE OF OKLAHOMA, Complainant,**

**vs.**

**THE A. T. & S. F. RY. CO. ET AL., Respondents.**

---

**MEMORANDA SUPPLEMENTARY TO STATE'S  
BRIEF ON DEMURDER.**

---

**CHAS. W. WISE,**

*Attorney General of the State of Oklahoma,*

*for the State.*





IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

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Original, No. 14.

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STATE OF OKLAHOMA, COMPLAINANT,

*vs.*

THE A., T. & S. F. RY. CO. ET AL., RESPONDENTS.

---

**Congressional and State Agreements to Protect Indian  
Futile if Liquor is a Food and May Lawfully Cir-  
culate in Interstate Commerce, Notwithstanding  
Enabling Act and its Interdiction In the Indian  
Territory.**

---

The question is not whether the law of the case of Bowman *vs.* C. & N. Ry. (125 U. S., 465), was correctly laid down, nor whether the facts were then as correctly found as

scientific knowledge then made possible. But, accepting the law rule of that case (that foods must freely circulate unless Congress interdicts), can it be said in the light of present knowledge that liquor is a food; else "*cessante ratione, cessante lege*," and also the question is the Enabling Act an interdiction for the Indian Territory.

### **Is Liquor a Food or a Drug?**

The purpose of the inquiry is to discover simply whether liquor is so clearly a food that the rule of the Bowman case (125 U. S., 465) is still applicable to interstate shipments into Oklahoma, notwithstanding Congressional and State legislation and the duty arising to protect the Indian.

### **Summary of Physicians' Opinions.**

See an able article by Henry Smith Williams, M. D., McClure, October, 1908, Volume 31.

Certainly the physicians do not agree that it is a food.

"As typical illustrations, let us note that the celebrated gynæcological surgeon Professor Howard A. Kelly, of Johns Hopkins, declares: 'My experience has taught me that the effect (of alcohol) is temporary, evanescent, that the drug (for such it is) does no real good, and that a dangerous habit is thus easily engendered, which may be most difficult to eradicate, a habit that may utterly ruin the patient's body, soul, and spirit'; and that the distinguished neurologist, Dr. Frederick Peterson, Professor of Psychiatry at Columbia University, has thought it worth while to have printed on the back of his pre-

scription blanks: 'Alcohol is a poison. Some claim that it is a food; but, if so, it is a poisoned food.' "

Dr. Smith in "The Century," Nov., 1910, p. 45.

### **Its Decreasing Use in the Hospitals.**

Dr. Smith in "The Century," *supra*, says:

\* \* \* "Dr. Holitscher, collating the results of inquiries addressed to one thousand institutions in Europe, reports that 'the use of intoxicants has very considerably fallen off in Germany, Austria, and Switzerland within the twelve years covered by his investigation (1895-1907). The diminution of the consumption of wine in the three countries, taken together, amounts to 57.2 per cent per head in asylums, and 46.3 per cent in hospitals. In the case of beer, the corresponding figures are 53.3 per cent and 28.8 per cent. Very large sums were saved through this diminution. In German asylums, for example, the yearly saving amounts to \$34,000, although the patients have increased 79.6 per cent in number.' "

Continuing, he says:

"The American investigation, conducted by Mrs. Martha M. Allen, deals with a smaller number of institutions, but is closely similar in its general results, as the citation of a few instances will show. Thus, in the year 1899 the Massachusetts General Hospital spent \$3,002 for alcoholics, and in 1906 only \$738. The Long Island State Hospital reports a decrease of one-half in the consumption of alcoholics in ten years; the Buffalo General Hospital and the Pennsyl-

vania General Hospital each a decrease of one-third in the same period; the German Hospital of New York a diminution of 75 per cent in fifteen years (in the opinion of the chief surgeon, Dr. James P. Warbasse). Mt. Sinai Hospital reports the use of alcoholics an exception rather than the rule. The physicians of the Milwaukee City Hospital prescribe very little alcohol, as 'they believe they have more reliable agents at their command for most cases.' The Hospital of the Good Shepherd reports 'great decrease in recent years.' The Cook County Hospital, Chicago, spent just over three cents per capita for alcoholics in 1908; Bellevue and Allied hospitals, New York, and the Manhattan State Hospital, each spent less than three cents per capita, while the Frances E. Willard Hospital, Chicago, the Battle Creek Sanitarium, the Red Cross Hospital, in New York, and the Kane County Hospital, at Kane, Pennsylvania, are all strictly non-alcoholic in practice."

### **Largest Industries Declare it a Drug.**

See Article in "The World Today," October, 1910, page 1164, "Enforced Sobriety."

**The author says:**

"The Lake Shore and Michigan Southern Railway Company has adopted the following rule:

"'No person will be retained in the service of this company who is known to frequent saloons or places of low resort, or who is known to make habitual use of intoxicating liquors. Every person in charge of employees is hereby directed to dismiss from the serv-

ice any who are guilty of these practices, and they will themselves be held personally responsible for having such men in their employ.' ”

The standard code of train rules of the American Railway Association, covering the matter in question, reads as follows:

“The use of intoxicants by employees, while on duty, is prohibited. Their habitual use, or the frequenting of places where they are sold, is sufficient cause for dismissal.”

The secretary of this association says a majority of all the roads have adopted these rules.

The Pullman Company is one of the greatest car builders in the United States, and is capitalized at \$36,000,000, and its pay roll carries more than twenty thousand employees. Its secretary says:

“Intemperance is a subject of special inquiry before an appointment can be made, and employees understand that it cannot be countenanced, and they are specially instructed that it is one of the causes which will subject the offender to dismissal.”

The Chicago & Alton Railway Company has issued the following order:

“The use of intoxicating drinks and the frequenting gambling places or other places of low resort has proven a most fruitful source of trouble to railways as well as to individuals. Recognizing this fact, this company will exercise the most rigid scrutiny in reference to the habits of employees in this respect.

"The use of beer or other intoxicating liquor by any employee of this company while on duty is strictly prohibited, and no employee will be allowed to have such liquors in or about any station, shop or yard or other premises of this company, at any time or under any circumstances. Any conductor, trainman, engineer, fireman, switchman or other employee who is known to use intoxicating liquors or frequent gambling places or other places of low resort, either while on or off duty, will be promptly and permanently discharged from the service of this company. Heads of departments, subordinate officers and foremen are hereby instructed to see that these rules are strictly enforced at all times."

The Union Pacific Railway Company, with three thousand miles of road and seventeen thousand operatives, has adopted substantially the same restrictions, as also has the Wisconsin Central Railway and the Pennsylvania Railway Companies.

The Chicago, Milwaukee & St. Paul Railway Company, one of the greatest trunk lines of the West, enforces the following restrictions:

"The use of intoxicating drinks has proven a most fruitful source of trouble to railways as well as to individuals. This company will exercise the most rigid scrutiny in reference to the habits of employees in this respect, and any employee who has been dismissed on this account will not be re-employed. Drinking when on duty or frequenting saloons will not be tolerated, and preference will be given to those who do not drink at all."

The company's general superintendent says: "This rule is rigidly enforced and employees are dismissed for its violation, and cannot be re-employed in any department."

The New York Central & Hudson River Railway Company and the Boston & Albany Railway Company have this same operating rule, and the New York Central Company says:

"We enforce this order rigidly, and while dismissals have occurred for non-compliance with this rule, we are pleased to note that they have been few and far between. It is one of the things our employees understand, that no excuse will be accepted for intoxication."

The Chicago & Northwestern Railway Company have in force very stringent rules, and say:

"This company considers that drinking unfits a man for a responsible position on the train or engine service, or in any other important position, and these rules have tended to improve the morals of the service by eliminating many undesirable employees."

The Chicago, Burlington & Quincy, the Illinois Central, the Chicago, Rock Island & Pacific, and the Missouri, Kansas & Texas Railway Companies have all adopted and are enforcing these orders. The Burlington officials say:

"We do not employ men who drink on or off duty. We do not allow passenger trainmen to use tobacco while on duty."

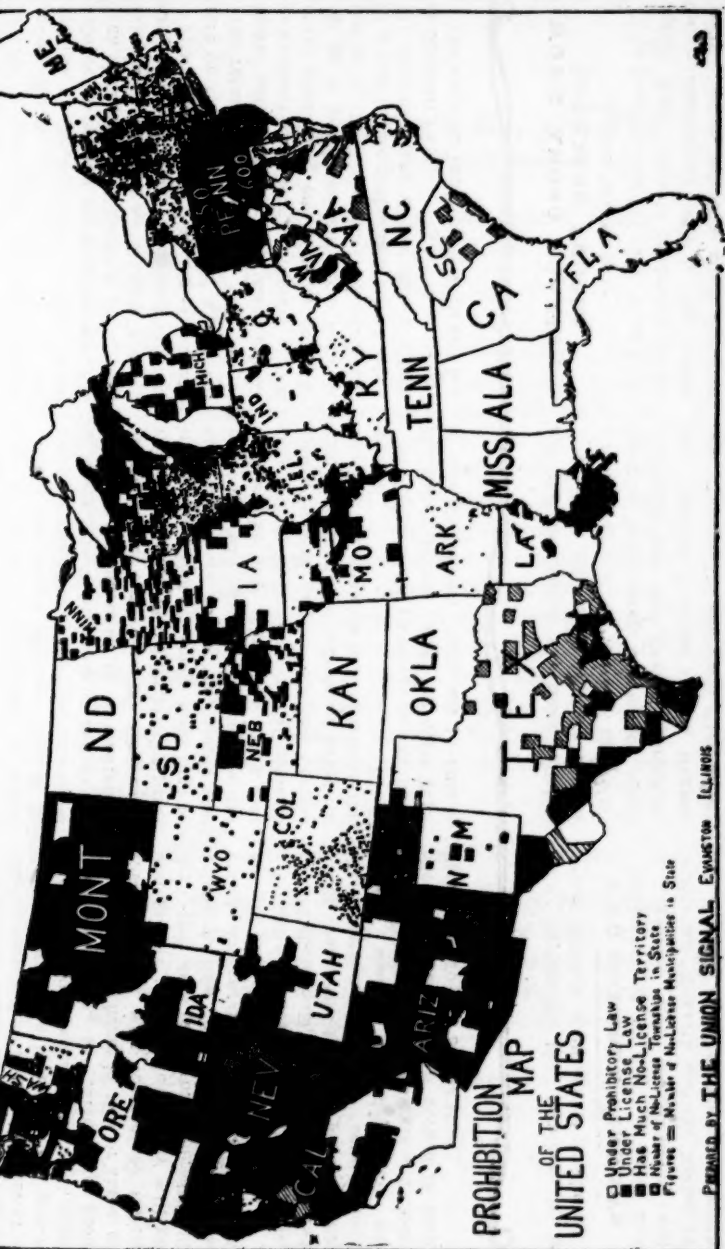
The nature of this employment and the responsibility assumed call for the very best efforts physically and the brightest mentality of all those who safeguard the lives of passengers; exhaustion by overwork, or a brain made obtuse by ebriety, renders the perpetrator criminally liable.



**A Large Portion of the People and Legislatures of the  
States of the United States Regard Intoxicating  
Liquor as a Noxious Drug.**

As indicating the growing public sentiment I append a map dated August 25, 1910, taken from *The Union Signal* of Evanston, Ill.

[See map, next page.]



# The Revised Prohibition Map of the United States

empty, and they may be full in another month! St. Louis district ordered 50,000 leaflets at one time, and will have to order again. Thousands have been printed of the right size to slip in envelopes, or to hand out at gatherings. Fifteen thousand of Missouri's pretty flags, with the motto, "Missouri's going dry, will you help?" have been ordered.

Miss Robb began handing out literature on the street cars. Not a man has ever refused it. The idea bids fair to make her famous. The metropolitan newspapers gave lengthy reports of this novel proceeding, one of them going so far as to quote verbatim from some of the W. C. T. U. literature, showing that in a year's time prohibition Maine sends but sixty-five men to her state's prison to Missouri's 887.

The ice is broken! Miss Robb and her

## WORK AMONG FOREIGN SPEAKING PEOPLE

Special Correspondence

The Scandinavian W. C. T. U. of Worcester, Mass., recently celebrated its nineteenth anniversary with a big public festival, which attracted much attention among the Swedish people, and which resulted in gaining several new members. Miss Elizabeth Gordon, acting president

Her unions had Dr. Tracey of Indianapolis for a whole month. He gave a series of lectures, illustrated by stereopticon and motion pictures. Mrs. E. E. Peterson, president of the Thurman union of Texas, was in St. Louis for two weeks. She was accompanied by a quartet of singers of her own race. Mr. Charles E. Stokes, chairman of the Prohibition party of the state, thought this a good time to emphasize work among the colored people. He will pay for twenty silver medals, the only stipulation being that they are to be used in medal contests among colored people, and the Central union of St. Louis has been asked to work up the contests and distribute the medals.

St. Louis white ribboners are to have Mrs. Mary Harris ARMOR for eight days in late September. They are to hold a

and the attendance was most satisfactory. Prof. Emmanuel Hillberg gave a stirring temperance address, and Mrs. Herman Young sang temperance songs translated into the Swedish language. Mrs. Amanda Peterson read a translation of one of the addresses given at the World's Convention in Glasgow. Later a large reception was given at the Swedish restaurant, and several new

the grass and their people attended the lectures. Father John Fugel of Vienna, Maries county, who is the publisher of a Catholic paper, the *Home Adviser*, prints in it all of our special W. C. T. U. campaign literature. He intends to flood every Catholic home in two or three of these counties with temperance tracts, and asserts that Maries county will go dry. If it does, much of the credit will belong to this good priest. Even Gasconade county, the seat of the wine traffic, will give many prohibition votes.

To balance Father Fugel's action, Rev. C. C. Cunningham, a Baptist pastor and editor, has printed in his paper, which also reaches a large constituency, Father Cassidy's fine prohibition addresses. Missouri Protestants and Catholics have never before worked in such harmony. To God be the glory!

state. Personally the nominee is a strong advocate of state-wide prohibition.

## TWO NOTABLE WINDOWS

September 22 is to be a great day in Lexington, Ky. Bishop Denny will lecture on "Epworth and the Mother of the Wesleys," and unroll an Epworth memorial window having a life size portrait of Susanna Wesley, "the greatest woman of the eighteenth century." On the same day, in the same Central Col-

## **Experience of Prison Experts, Public Men, Actuaries Soldiers, Sailors, is That it is a Pernicious Drug.**

See article entitled "America Sober," by Samuel J. Barrows, President International Prison Commission, in "Outlook," February 20, 1909, page 399.

Mr. Barrows says:

"The experience of the United Temperance Institution, based upon an analysis of forty years, showed that the percentage of actual to expected deaths in the abstainers' class is 71.52, and in the general, 94. These tables were submitted to an exhaustive analysis by English Actuaries, and the President of the English Institute of Actuaries publicly admits that the abstainers, as a class, are better and live longer than the nonabstainers. Five other life insurance companies give a bonus to abstainers, and fourteen other insurance companies give a reduction of premium to total abstainers, varying from five to ten per cent; and this reduction is based, not only on the greater immunity from accident enjoyed by that class, but on the more rapid recovery when stricken down by accident."

Vice-Admiral Beresford, of the English Navy, has said:

"I do not believe that alcohol in any form has ever done any one any good. I am now sixty years old, and since I have entirely given up wine, spirits, and beer, I find I can do as much work, or more, physically and mentally, than I could do when I was thirty."

Moltke, himself an abstainer, said: "Beer is a far more dangerous enemy to Germany than all the armies of France."

President Taft, when Secretary of War, said:

"With hardly an exception, the men who are incapacitated first during the preliminary activities of any campaign are the drinkers. The same is true in every effort of life which demands the best energy of a man." \* \* \*

"To the man who is actively engaged in responsible work, who must have at his command the best that is in him, at its best—to him I would, with all the emphasis that I possess, advise and urge, leave drink alone—absolutely. He who drinks is deliberately disqualifying himself for advancement. Personally, I refuse to take such a risk. I do not drink."

Sir Frederic Treves, Surgeon in Ordinary to the King, in describing the relief column that moved on to Ladysmith, said:

"The first who dropped out were the drinkers, and they dropped out as clearly as if they had been labeled with a big letter on their backs."

The manager of a baseball team said:

"A boozier is out of the question now on any baseball team, and that is understood."

Mr. Barrows says:

"As to the effect of prohibition, Cambridge, Massachusetts, has been under no-license for twenty years, and the Mayor and the President of Harvard say:

"Lost revenue from license is more than offset by the savings in the banks, expense of the police department, care of paupers and insane."

Mr. Wadlin in his report of the Bureau of Labor Statistics for 1895 said:

"Of the whole number of convictions in Massachusetts in 1895, 26,672, the total abstainers were 5.76 per cent."

Dr. Eliot, of Harvard, said:

"The recent progress of science has satisfied me that the moderate use of alcohol is objectionable; that the habitual use of alcohol is lowering to the intellectual and nervous power."

And further on he says:

"If no-license in Cambridge has been a success, it is possible to exclude the saloon absolutely from a city of ninety thousand inhabitants, and have no alcoholic substitutes therefor."

### **Yet While Prohibition Spreads Drinking Increases.**

See Literary Digest of August 27, 1910.

*New York Sun*: Shows a consumption of domestic spirits for 1900 of 95,651,396 gallons, and for 1910 of 128,657,776 gallons.

Imported spirits have increased from 1,705,468 gallons to 4,262,421 gallons.

Fermented liquors have increased from 39,330,849 barrels in 1900 to 59,485,117 barrels in 1910.

*New York Times*: According to the *New York Times* there was a per capita consumption of 16.50 gallons in 1897 to 21.85 gallons in 1909.

### And Drunkenness Increases.

See Literary Digest of March 19, 1910.

The prohibition organ for Ohio, *The American Issue* (Columbus), says that the total arrests for all crimes in 1902, 1905, and 1907 were as follows:

1902.....	1,015,953
1905.....	1,212,564
1907.....	1,369,361

Arrests for drunkenness:

1902.....	366,853
1905.....	436,514
1907.....	482,371

### Cause of Increase of Drinking and Drunkenness is Nullification of State Prohibition by Interstate Commerce Therein.

See article "The 'Dryness' of 'Dry' States," *Literary Digest*, December 31, 1910, page 1219. I shall quote from it:

"The statistics show that the amount of distilled spirits produced in the United States during the fiscal year 1910 was 156,237,526 gallons, an increase of 22,786,771 gallons over the amount for 1909. The amount of distilled spirits withdrawn for consumption in 1910 was 126,384,726, an increase of 11,691,148 gallons over 1909. The amount of fermented liquors withdrawn for consumption also showed an increase of 3,181,620 barrels. *The American Issue* believes that the figures of the internal revenue report simply show that the continued decrease in the consumption of intoxicants in the prohibition States has been more than counterbalanced by a larger increase in the license States. In support of its contention it presents the following table comparing the amounts of distilled liquors produced in the prohibition States in 1909 and 1910:

State.	1909. Gallons.	1910. Gallons.	Decrease.
Alabama and Mississippi.....	176	.....	176
Georgia .....	19,018	11,773	7,245
Kansas and Oklahoma .....	357	.....	357
Maine, Vermont, and New Hampshire.....	.....	597	*597
North Carolina.....	271,761	601	271,160
North and South Dakota.....	.....	.....	.....
Tennessee.....	1,079,215	619,034	460,181
Net totals.....	1,370,527	632,005	738,522

As a contrast to these figures it calls attention to those for the States containing the three largest license cities in the United States :

States.	1909. Gallons.	1910. Gallons.	Increase. Gallons.
New York.....	6,674,603	8,775,394	2,100,797
Pennsylvania.....	7,793,950	9,322,097	1,528,141
Illinois.....	37,793,376	38,027,381	234,005
Totals.....	52,261,929	56,124,872	3,862,943

Equally significant, thinks *The American Issue*, is the following table showing the fermented liquors withdrawn for consumption in the prohibition States :

States.	1909. Barrels.	1910. Barrels.	Decrease. Barrels.
Alabama and Mississippi...	57,204	11,520	45,684
Georgia.....	115,155	128,750	*13,595
Kansas and Oklahoma.....	5,872	510	5,362
Maine, Vermont, and New Hampshire.....	274,733	268,168	6,565
North Carolina.....	.....	.....	.....
North and South Dakota...	44,940	50,605	*5,665
Tennessee.....	255,200	221,850	33,350
Net totals.....	753,104	681,403	71,701

\* Increase.



It will be observed from the above tables that the district of Maine contains also the liquor States of New Hampshire and Vermont, and that the North Dakota district includes "wet" South Dakota as well.

Over against these figures *The American Issue* puts those for New York, Pennsylvania, and Illinois :

States.	1909. Barrels.	1910. Barrels.	Increase. Barrels.
New York.....	12,572,042	13,095,353	523,311
Pennsylvania.....	7,050,262	7,664,141	613,879
Illinois.....	5,525,473	6,024,884	499,411
Net totals....	25,147,777	26,784,378	1,636,601

"To quote further:

"In this connection it is perhaps worth while to notice the comparative size of the liquor industry in the prohibition and license States. The total amount of distilled liquors produced in Maine, New Hampshire, and Vermont during 1910 was 597 gallons, while that of New York with five times the population of these three States, was 8,775,394 gallons.

"The distilled spirits produced in the prohibition States of Alabama, Mississippi, Georgia, and North Carolina for the year amounted to 17,774 gallons, while in licensed Pennsylvania, with about the same population, the amount was 9,322,097 gallons.

"The total production of distilled spirits in Tennessee, Kansas, Oklahoma and North and South Dakota was 619,034 gallons, while that of Illinois was 38,027,381, all of which simply goes to show that but for nullification of the spirit of the State prohibitory laws by the provision of the Federal Interstate Commerce Law, the liquor traffic in the prohibition States would be decidedly a thing of the past.

"The same deadly contrast appears in the withdrawal of fermented liquors for consumption in the several States during 1910. The States of Maine, New Hampshire, and Vermont withdrew 268,168 barrels of fermented liquors during the year, while the State of New York withdrew 13,095,353 barrels. The prohibition States of Alabama, Mississippi, Georgia, and North Carolina withdrew 140,270 barrels, while licensed Pennsylvania withdrew 7,664,141 barrels. The States of Tennessee, Kansas, Oklahoma, and North and South Dakota withdrew 272,965 barrels during the year, while the State of Illinois, with the great "wet" city of Chicago, withdrew 6,024,884.' "

In the face of this experience to hold that liquor is a food, the interstate commerce in which is not forbidden, practically nullifies the very condition precedent to Oklahoma statehood, and exposes first the Indians to sure destruction by liquor, and second the State of Oklahoma itself to inestimable and never-ending harm and friction if there is to be within its borders two kinds of law as to intoxicating liquor. Lincoln's celebrated dictum that the Union could not continue half slave and half free is applicable. Both the Indians and the State stare in the face unending greed and never-ceasing effort to nullify the compacts as to liquor (Crowley *vs.* Christensen, 37 U. S., 86), unless it is held that liquor is today in Oklahoma a drug, commerce in which is by the command and consent of the Congress and command of the State totally forbidden, except the medicinal and industrial uses specified in the Enabling Act.

Respectfully,

CHAS. WEST,  
*Attorney General of Oklahoma, for the State.*



IN THE  
Supreme Court of the United States.

OCTOBER TERM, 1910.

THE STATE OF OKLAHOMA,

PLAINTIFF,

vs.

1. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
2. GULF, COLORADO & SANTA FE RAILWAY COMPANY,
3. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
4. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY,
5. MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
6. KANSAS CITY SOUTHERN RAILWAY COMPANY,
7. FT. SMITH & WESTERN RAILROAD COMPANY,
8. THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
9. AMERICAN EXPRESS COMPANY,
10. PACIFIC EXPRESS COMPANY, AND WELLS FARGO EXPRESS COMPANY.

DEFENDANTS.

Office Supreme Court, U.  
FILED.

FEB 16 1911

JAMES H. McKENNE

CLERK

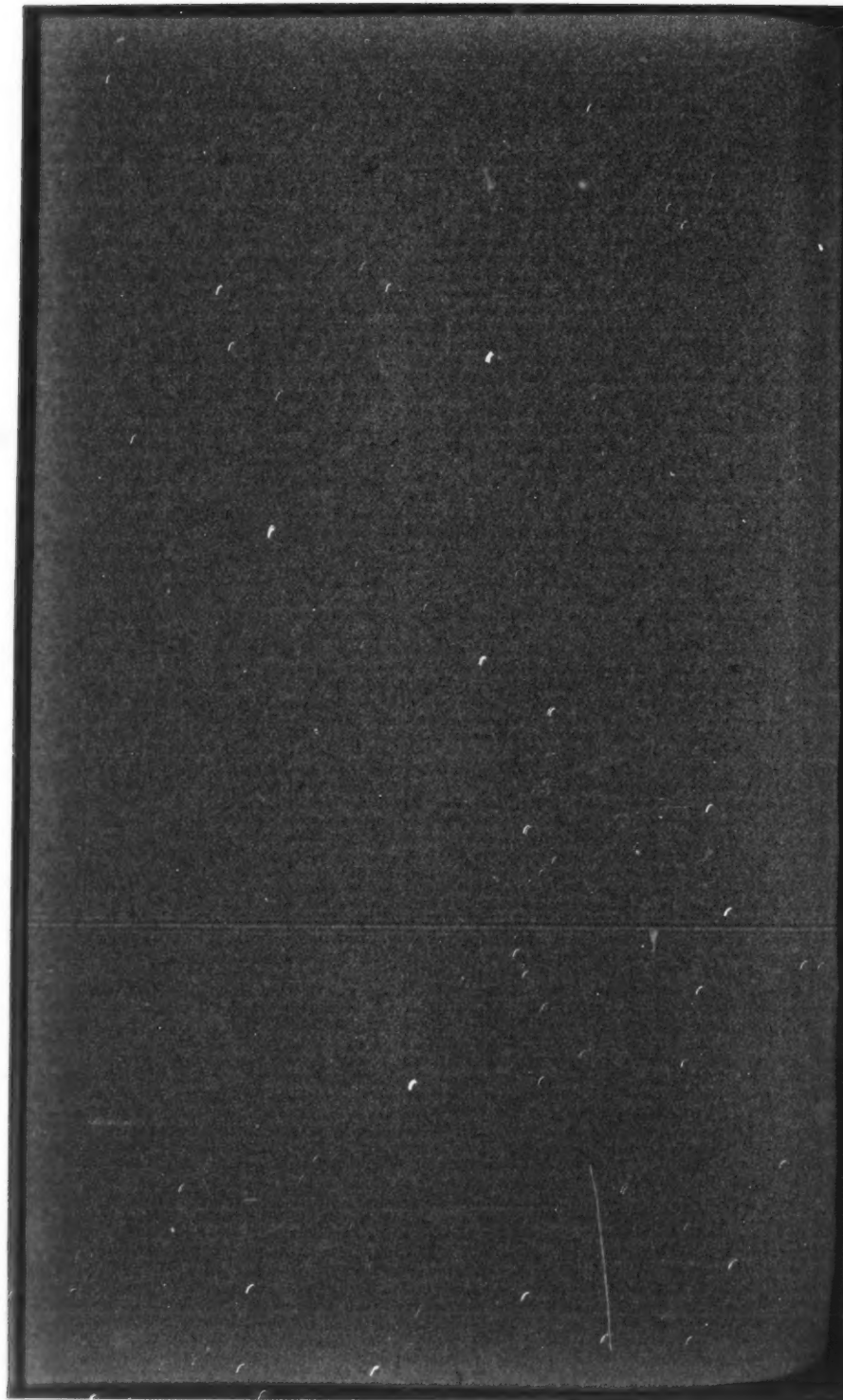
No. 14  
Original.

BRIEF ON BEHALF OF MISSOURI, KANSAS & TEXAS  
RAILWAY COMPANY IN SUPPORT OF ITS SEPARATE  
DEMURRER TO THE BILL.

JOSEPH M. BRYSON,  
CLIFFORD L. JACKSON,  
WILLIAM R. AILEN.

Solicitors for the Defendant Missouri,  
Kansas & Texas Railway Company.

JAMES HAGERMAN,  
BRITTON & GRAY, *A. H. Brown*  
Of Counsel.



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- 1 ATCHISON, TOPEKA & SANTA FE RAIL-  
WAY COMPANY,
- 2 GULF, COLORADO & SANTA FE RAIL-  
WAY COMPANY,
- 3 ST. LOUIS, IRON MOUNTAIN & SOUTH-  
ERN RAILWAY COMPANY,
- 4 ST. LOUIS & SAN FRANCISCO RAILROAD  
COMPANY,
- 5 MISSOURI, KANSAS & TEXAS RAILWAY  
COMPANY,
- 6 KANSAS CITY SOUTHERN RAILWAY  
COMPANY,
- 7 FT. SMITH & WESTERN RAILROAD COM-  
PANY,
- 8 THE CHICAGO, ROCK ISLAND & PACIFIC  
RAILWAY COMPANY,
- 9 AMERICAN EXPRESS COMPANY,
- 10 PACIFIC EXPRESS COMPANY, AND  
WELLS FARGO EXPRESS COMPANY,

DEFENDANTS.

No. 14  
Original.

STATEMENT OF CASE.

This is an original suit in equity for an injunction instituted by the Attorney General of the State of Oklahoma in the name of the State against the several

railroad and express companies named in the caption of the bill. The nature and extent of relief sought is indicted in the prayer of the bill, as follows:

“WHEREFORE, the plaintiff asks that the defendants and each of them may be enjoined and restrained from further introducing, conveying and furnishing intoxicating liquors, including ale, wine and beer in any form, at any place, at any time and in any manner in said State of Oklahoma within the limits of what was formerly the Indian Territory, including the Osage Reservation, and that any other parts of said State which existed as Indian Reservations on the first day of January, 1906; and further be enjoined and restrained from carrying, conveying, delivering and furnishing intoxicating liquors, including ale, wine and beer, in any form and in any place, at any time and in any manner, in said State, to any or all of the persons named in the said list as being persons who have paid the special tax required by the United States of liquor dealers; and that in default of obedience of said defendants to the order of injunction prayed for, that their corporate rights to do a business in interstate commerce with persons in said State be forfeited, and for the costs of this action and such other relief as the equity of the case may warrant, and plaintiff will ever pray.” (Original Bill, pp. 98-99.)

A demurrer has been filed on behalf of the defendant Missouri, Kansas & Texas Railway Company,

whereby the sufficiency of the bill exhibited by the State is questioned upon the several grounds enumerated in the demurrer, which is as follows, omitting the caption, signatures and verification:

“The demurrer of the above named defendant, Missouri, Kansas & Texas Railway Company, to the Bill of Complaint of the above named complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, demurs to the said bill, and for causes of demurrer shows:

I.

It appears by the complainant's own showing in said bill that it is not entitled to the relief prayed by the bill against this defendant.

II.

It appears by the said bill that there are divers other persons who are necessary parties to said bill, but who are not made parties thereto, and in particular it appears that by this bill it is sought to determine and settle the rights not alone of the parties made defendants to this bill, but of the various parties named in the body of the bill and who are not made parties thereto, but whose rights are materially involved in the subject of



the bill, and that complete justice cannot be done unless said other parties so named in said bill be made parties thereto, that they are necessary parties defendant and, if joined, this Court would have no jurisdiction of the bill.

### III.

Said bill is exhibited against this defendant and against the several other defendants in said bill for several and distinct and independent matters and causes which have no relation to each other, and in which or in the greater part of which this defendant is in no way interested or concerned and ought not to be implicated.

### IV.

Said bill does not involve any controversy of a civil nature as against this defendant.

### V.

By said bill and in this suit the said complainant, the State of Oklahoma, is seeking to enforce its penal laws.

Wherefore, and for divers other good causes of demurrer to said bill, this defendant demurs thereto and humbly demands the judgment of this court whether it shall be compelled to make any further or other answer to said bill, and prays to be hence dismissed with its costs and charges in the matter most wrongfully sustained.”

Inasmuch as the court in determining the sufficiency of the bill, when tested by the demurrer, can look to the bill alone, it is not deemed necessary to copy the bill in full in this brief, but reference is respectfully made thereto.

### BRIEF OF ARGUMENT.

THE DEMURRER TO THE BILL SHOULD BE SUSTAINED BECAUSE THE FACTS THEREIN ALLEGED ARE NOT SUFFICIENT TO AUTHORIZE THE RELIEF SOUGHT.

The general insufficiency of the allegations of the bill to obtain the relief sought is questioned in paragraph one of the demurrer, which is as follows:

“It appears by the complainant’s own showing in said bill that it is not entitled to the relief prayed by the bill against this defendant.”

The State is seeking in this suit to absolutely prohibit any common carrier named in the bill from transporting **intoxicating liquors from** points without the State of Oklahoma to points within that part of the State of Oklahoma which was formerly the Indian Territory, the Osage Reservation and any other part of the State which existed as an Indian reservation on the 1st day of January, 1906, and to any person, firm, corporation or association which has paid the special tax required by the United States of liquor dealers, regardless of where such persons, partnerships, corporations, or associations reside, transact business or are located within the State.

While it has been repeatedly held by this court, as will hereafter be shown, that the State has no juris-

diction over intoxicating liquors while they remain articles of interstate commerce, it might be well to call attention to several Acts of Congress showing the Federal legislation touching this subject. This legislation in itself would be sufficient to remove from the State any power which it might possibly have exercised over such liquors under the doctrine that the State might legislate with reference to matters incidentally affecting interstate commerce, where the Federal Government has taken no action.

Section 5258 of the Revised Statutes of the United States provides:

“Every railroad company in the United States, whose road is operated by steam, its successors and assigns, is hereby authorized to carry upon and over its road, boats, bridges, and ferries, all passengers, troops, Government supplies, mails, freight, and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination \* \* \*”

Section 3 of an Act entitled “An Act to Regulate Commerce,” approved February 24, 1887 (24 Stat. at L. 380) provides:

“That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company,

firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. \* \* \*

An Act entitled "An Act to Limit the Effect of the regulations of commerce between the several States and with foreign countries in certain cases," approved August the 8th, 1890 (26 Stat. at L. 313), commonly called the "Wilson Act," is as follows:

"That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

That portion of the Act of Congress entitled, "An Act to Codify, Revise, and Amend the Penal Laws of the United States," approved March the 24th, 1909 (35 Stat. at L. p. 1136 and 1137), relating to the han-

dling of interstate shipments of intoxicating liquors by common carrier provides:

“Sec. 238. Any officer, agent, or employee of any railroad company, express company, or other common carrier, who shall knowingly deliver or cause to be delivered to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the bona fide consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind which has been shipped from one State, Territory or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

Sec. 239. Any railroad company, express company, or other common carrier, or any other person who, in connection with the transportation of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the juris-

diction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall collect the purchase price or any part thereof before, on, or after delivery, from the consignee, or from any other person, or shall in any manner act as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined not more than five thousand dollars.

Sec. 240. Whoever shall knowingly ship or cause to be shipped, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, any package of or package containing any spiritous, vinous, malted, fermented, or other intoxicating liquor of any kind, unless such package be so labeled on the outside cover as to plainly show the name of the consignee, the nature of its contents, and the quantity contained therein, shall be

fined not more than five thousand dollars; and such liquor shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law.”

It has been conclusively determined by this court that intoxicating liquors are legitimate articles of commerce, and that the State cannot interfere with such liquors while they retain their status as interstate shipments. The question has been foreclosed by this court in a line of decisions terminating in the case of *Adams Express Company vs. Kentucky*, 214 U. S. 218, 53 L. ed. 972. The opinion of the court delivered by Mr. Justice Brewer in the case just mentioned, does not discuss the questions presented at any length but merely calls attention to the previous decisions of the court thereby apparently indicating that it is no longer an open question. It is stated therein that—

“Liquor, however obnoxious and hurtful it may be in the judgment of many, is a recognized article of commerce.”

and further:

“That the transportation is not complete until delivered to the consignee is also settled.”

In *Adams Express Company vs. Kentucky*, 206 U. S. 129, 51 L. ed. 987, Mr. Justice Brewer delivering the opinion of the court says:



“The testimony showed that the package, containing a gallon of whisky, was shipped from Cincinnati, Ohio, to George Meece, at East Bernstadt, Kentucky. The transaction was therefore one of interstate commerce, and within the exclusive jurisdiction of Congress. The Kentucky statute is obviously an attempt to regulate such interstate commerce. This is hardly questioned by the court of appeals, and is beyond dispute under the decisions of this court.”

The following decisions of this Court are pertinent upon this point and clearly show that the transactions of which the State is complaining are interstate commerce and of such a character that the State can not in any wise interfere therewith:

Heymann vs. Southern Railway Company, 203 U. S. 270, 51 L. ed. 178.

American Express Company vs. Iowa, 196 U. S. 133, 49 L. ed. 417.

Rhodes vs. Iowa, 170 U. S. 412, 42 L. ed. 1088.

Vance vs. W. A. Vandercook Co., 170 U. S. 438, 42 L. ed. 1100.

Scott vs. Donald, 165 U. S. 107, 41 L. ed. 648.

Leisy vs. Hardin, 135 U. S. 100, 34 L. ed. 128.

Bowman vs. Chicago & Northwestern R. Co., 125 U. S. 465, 31 L. ed. 700.

If the State Dispensary-Prohibition law (Chapter 69 of the Session Laws of Oklahoma of 1907 and 1908, approved March 24, 1908), entitled “An Act to estab-

lish a State agency and local agencies for the sale of intoxicating liquors for certain purposes; and providing for referring the same to the people; prohibiting the manufacture, sale, barter, giving away or otherwise furnishing of intoxicating liquors, except as herein provided; providing for the appointment of an attorney, and for the enforcement of the provisions of this act; making an appropriation and declaring an emergency," set out in the plaintiff's bill, attempts to vest the State with jurisdiction over liquor before it ceases to be an article of interstate commerce the attempted exercise of power would be violative of the Federal constitution, and the plaintiff's bill would be predicated upon a void law and no relief could be granted as is clear from the authorities above referred to.

The courts of last resort of the State of Oklahoma have construed the State law, above referred to, as operative only after delivery to the consignee. Two tribunals of the State, namely, the Supreme Court and the Criminal Court of Appeals, are not entirely in harmony as to when delivery of an interstate shipment of liquor to the consignee has been effected, each basing its opinion upon the decisions of this Court but interpreting them differently, but both are in accord that as long as the shipment remains in the hands of the carrier its status as an interstate shipment continues. The last pronouncement of the State Supreme Court is found in the case of *St. Louis & S. F. R. Co. vs. State*, 109 Pac. 230, decided May 10, 1910, not yet officially reported. In this case certain enforcement

officers seized ninety-seven cases of whiskey in the possession of the St. Louis & San Francisco Railroad Company at Tulsa, Oklahoma, and also ten cases which had just been removed from the car by Taylor & Overton. The shipment originated at Louisville, Kentucky, and was transported by the St. Louis & San Francisco Railroad Company over a portion of the route. The trial court found that the possession of ninety-seven cases by the railroad company, and the possession of the ten cases by Taylor & Overton was in violation of the State Dispensary-Prohibition law above referred to, and the railway company appealed from the ruling of the trial court. The Supreme Court held that the ninety-seven cases in possession of the railroad company were not subject to seizure but that the ten cases in possession of Taylor & Overton were subject to seizure. Mr. Justice Williams, delivering the opinion of the Court, says:

“The plaintiff in error railway company, as an interstate carrier, had a right to retain the possession of such liquors for delivery to the consignee by virtue of such interstate shipment.”

He further says:

“The court having found that the claimant, the St. Louis & San Francisco Railroad Company, was in possession of the 97 cases of whisky taken from it on June 20, 1908, by the officers of the State, which came to its possession at Tulsa, Okla., on June 18, 1908, under the interstate shipment initiated at Louisville, Ky., this finding is

binding on this court. It necessarily follows, under such finding that the 97 cases had not been delivered to the consignee or his agent, and that the State laws had not attached."

He further says:

"Under this record, at least as to the 97 cases, this cause must be reversed. As to the 10 cases taken from Taylor & Overton, on the premises of the interstate carrier, the court having found that the same were taken from the possession of the said Taylor & Overton, but not having made any specific finding as to whether the same was delivered by the interstate carrier or its agent to the said Taylor & Overton as the representatives of the consignee, and the State law not attaching until a delivery by the interstate carrier to the consignee or his agent, the State would not be entitled to have the same confiscated until it is shown that such delivery had taken place."

In the case of the State vs. Eighteen Casks of Beer, 104 Pac. 1093, decided October the 4th, 1909, and not yet officially reported, the Supreme Court of Oklahoma had occasion to consider the same question. In this opinion the several opinions of the Supreme Court of the United States, above referred to, touching the question are reviewed and considered. In this case one P. W. Tucker had purchased outside of the State of Oklahoma a car load of beer and had the same shipped to him at Oklahoma City. Upon the arrival

of the car at its destination Tucker paid the freight thereon and surrendered the bill of lading and took possession of the contents of the car. There were one hundred twenty casks in the car and all but eighteen had been removed by him when the State enforcement officers seized the eighteen casks. The question to be determined was whether or not these eighteen casks were subject to seizure. The Supreme Court held that they were. In the course of the opinion it is said:

“When actual possession passed from the carrier to the consignee, the consignee, accepting the 120 casks of beer and acknowledging possession, that constituted a delivery; and, when the delivery was consummated, the State laws attached.”

The first paragraph of the syllabus written by the Court distinctly states the proposition decided in this case as follows:

“A citizen of Oklahoma having purchased intoxicating liquors in another State and caused the same to be transported to him as consignee in this State by an interstate shipment, the laws of this State by virtue of the police power (Act Cong. Aug. 8, 1890, c. 728, 26 Stat. 313, U. S. Comp. St. 1901, p. 3177), attach immediately after the consummation of the delivery by the carrier to the consignee.”

The case of *Swedes vs. State*, 1 Okla. Criminal Reports 245, 99 Pac. 804, is in accord with the two decisions last above quoted from as to when the ship-

ment loses its interstate character. The Criminal Court of Appeals of the State has recently had occasion to consider this subject in the case of *Alexander vs. State*, 106 Pac. 988, decided February 7, 1910, not yet officially reported.

The same court also considered the subject in the case of *McCord vs. State*, 101 Pac. 280, not yet officially reported, wherein the Court said:

“The testimony showed that the five barrels containing beer were shipped from Ft. Worth, Tex., to the defendant at Chickasha, Okla. The transaction was therefore one of interstate commerce, and within the exclusive jurisdiction of Congress. \* \* \*

After referring to several of the cases decided by the United States Supreme Court, above quoted, the opinion proceeds:

“The questions arising in this case are answered in the opinions above quoted. Congress, in the exercise of its exclusive power, enacted the so-called ‘Wilson Act.’ The proper construction and application of this Act of Congress has been settled by the Supreme Court of the United States; and, as this is a Federal question, this court is concluded by the decisions of the Supreme Court of the United States. That court, in the cases quoted, has declared that the States are not authorized to determine when interstate shipments shall become subject to State control and that the States cannot in any manner by legislation change

the effect of the Act of Congress. Congress may at any time abrogate, change, or modify the provisions of this so-called 'Wilson Act.' The last Congress passed an Act supplemental to it, but subsequent to the time of this alleged offense. This legislation is in the exercise of the constitutional power conferred by the commerce clause of the constitution. Under these adjudications the time when such shipments lose their interstate commerce character has been fixed as at the time when such shipments reach their destination at the home or storeroom of the consignee. Upon that event, they then become subject to the jurisdiction of the State. \* \* \*

The sixth article of the Constitution of the United States declares that: 'This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.' And Section 1, Art. 1 of the Oklahoma Constitution properly declares that: 'The Constitution of the United States is the Supreme law of the land.' The language of this article and the aforesaid section is direct and certain, and the adjudications of the United States Supreme Court on this question are conclusive on the State courts. It is a fundamental rule that legislative acts shall not be

declared void by the courts if by any reasonable construction thereof such result can be avoided. If by limitation upon its general terms the same can be fairly construed, and so applied as to bring the statute within the Constitution and thus save it from being in conflict therewith, such limitation and construction should be adopted. The evident and obvious purpose of our prohibition law was the regulation of the traffic in intoxicating liquors, and to prohibit the sale thereof in this state as a beverage. There is no apparent purpose on the part of the law making power to undertake the regulation of interstate commerce. The language of the law may be broad, but it is nevertheless subject to the limitation imposed upon the police power of the State by the provisions of the Federal Constitution. It cannot be said from the language used that it was the intention of the Legislature to pass an Act to affect said liquors before the same came under the jurisdiction of the State. The purpose of the Act is to control all intoxicating liquors within the jurisdiction of the State. The Act does not in express terms forbid interstate shipments, and a reference to the provisions of the Act clearly shows that the right to receive interstate shipments is therein recognized."

The opinion after quoting sections 18, 19-A and 20, article 3 of the State Dispensary-Prohibition law, proceeds:



“The evident purpose of these, the only provisions of said Act that can be said to relate to interstate shipments, is to prevent the abuse of this right. This we believe to be the proper construction and application of these provisions, and the correct conclusion is that said prohibition law, as enacted, does not contravene the Constitution of the United States.

The contention of counsel for the State that the Legislature, in effect, intended and attempted to make this law applicable to interstate shipments before the same reached their destination and became subject to State jurisdiction, and that the law by implication, as no exceptions are expressed, covers interstate shipments upon their arrival at the depot of the common carrier, is without merit, and is not well taken. The error of his argument is so self-evident as to require only a passing notice. The language of the foregoing sections quoted completely answers his contention. The operation and scope of criminal laws should not be enlarged by implication, but they should be liberally construed; and, where there is any well-founded doubt as to any Act being a public offense, especially one not *malum in se*, it should not be declared such, but should rather be construed in favor of the liberty of the citizen.

We are constrained to hold that the jurisdiction of the State does not take effect until said shipments reach their destination at the home or

place of storage of the consignee. Then, but not until then, can the State test the question of unlawful possession; and in this case the constructive possession of the defendant of the liquors in question was not a violation of any of the provisions of the prohibition law."

Other cases might be cited from both of the above mentioned courts touching this subject, but as there is no variation from the rule announced by these courts it is not deemed necessary to burden this brief with a reference to them. Those cited show the construction of the law in question in this State and in view of such construction it seems clear that the State can not insist that it has any power over these shipments until delivered to the consignee or that it is being injured and damaged as alleged in the bill by reason of such shipments.

The defendants in the performance of their duties as common carriers, both at common law and as imposed by the Acts of Congress above quoted, must receive, carry and deliver at destination shipments of intoxicating liquors regardless of quantity and regardless of to whom consigned. Neither this court nor the courts of last resort in this State have considered the amount of liquor in a shipment nor the person to whom consigned any criterion for determining when the State law attaches. If the amount of liquor received by any one consignee is indicative of the violation or an intent to violate the law that is certainly a matter in which the carrier in the due performance of its

duties is not concerned. It is purely a matter between the State and the consignee, and the State in the exercise of its police power has made ample provision for the punishment of offenders against its liquor law.

Congress in the recent penal statutes above quoted has given the State authorities means of ascertaining to whom every shipment of liquor is delivered, the amount of the shipment and the character of liquor contained therein and to insure the observance of the law by common carriers and those receiving liquor has assessed severe penalties for its violation. The Act of Congress represents the last expression of that body exercising the power of the Federal Government to regulate interstate traffic in intoxicating liquors, and it is apparent therefrom that in its interstate commerce aspect neither the quantity of liquor nor the consignee is a consideration.

THE FORCE OF THE BILL IS NOT INCREASED NOR IS ANY POWER VESTED IN THE STATE OF OKLAHOMA BY REASON OF THE FACT THAT CERTAIN INDIAN TREATIES PROHIBITED THE INTRODUCTION OF THE LIQUOR INTO THE INDIAN COUNTRY, NOR THAT CONGRESS IN THE ENABLING ACT IMPOSED UPON THE STATE CERTAIN LEGISLATION WITH REFERENCE TO INTOXICATING LIQUORS.

It is recited in the bill that by virtue of certain treaties between the United States Government and the Indians it was the custom and policy of the Gov-

ernment to prohibit the sale of liquor to Indians, and reference is made therein to several such treaties. These general allegations do not give to the State any rights which it would not possess in the absence of such treaties, because the rights of the State to deal with the liquor question after its admission to the Union were neither enlarged nor diminished by such governmental policy. Congress made it clear in the Enabling Act that the Federal Government did not seek to exercise control over this subject in the State with relation to the Indian when it provided in that Act what the State constitution should contain upon the subject. It is true that it sought to impress its views upon the people of the State as to what their legislation should be with reference to intoxicating liquors in a part of the new State but it left the execution of the law purely a matter of State concern. Congress did not legislate, but merely stated to the people of the State that in the event they accepted the proposition extended to them for statehood that they should enact a State law in conformity to the proposed law embodied in the Enabling Act. The provisions of this Act (Stat. at Large, Part 1, Vol. 34, page 269) are as follows:

“And said convention shall provide in said constitution \* \* \*

Second. That the manufacture, sale, barter, giving away, or other furnishing, except as herein-after provided, of intoxicating liquors within those parts of said State now known as the Indian Ter-

ritory and the Osage Indian Reservation and within any other parts of said State which existed as Indian reservations on the first day of January, nineteen hundred and six, is prohibited for a period of twenty-one years from the date of the admission of said State into the Union, and thereafter until the people of said State shall otherwise provide by amendment of said constitution and proper legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale, and wine, contrary to the provisions of this section, or who shall, within the above described portions of said State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from other parts of said State into the portions hereinbefore described, shall be punished, on conviction thereof, by fine not less than fifty dollars and by imprisonment not less than thirty days for each offense: Provided, That the legislature may provide by law for one agency under the supervision of said State in each incorporated town of not less than two thousand population in the portions of said State hereinbefore described; and if there be no incorporated town of two thousand population in any county in said portions of said State, such county shall be entitled to have one such agency, for the sale of such liquors for medicinal purposes; and for the sale, for industrial purposes,

of alcohol which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum not less than one thousand dollars conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the parts of said State hereinbefore defined shall constitute *prima facie* evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the liquor is to be used, and no sale shall be made for medicinal purposes except sales to apothecaries as hereinbefore provided unless such statement shall be accompanied by a bona fide prescription signed by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered, and the register thereof, together with the affidavits and prescriptions pertaining thereto, shall be open to inspection by any officer or citizen of

said State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for treatment of disease which after his own personal diagnosis he shall deem to require such treatment, shall upon conviction thereof, be punished for each offense by fine of not less than two hundred dollars or by imprisonment for not less than thirty days, or by both such fine and imprisonment; and any person connected with any such agency who shall be convicted of making any sale or other disposition of liquor contrary to these provisions shall be punished by imprisonment for not less than one year and one day. Upon the admission of said State into the Union these provisions shall be immediately enforceable in the courts of said State."

This Act clearly negatives the idea that there was any intention to prohibit the introduction of liquor into the parts of the State so named therein. No mention whatever is made of shipments from without the State of Oklahoma to points within that part of the State of Oklahoma named in the Act, but there is a specific prohibition against shipping liquor from other parts of the State into the portions of the State described in the Act. Congress recognized the right of the State to control the intrastate movement of liquor, and that movement alone. It directed the State to legislate in a certain manner with reference to the subject over which it had power to legislate but did not attempt to

vest in the State any power which it could not exercise in its sovereign capacity. Congress recognized that for the State to go further and attempt to prohibit the introduction of liquor into the State from other States would be nugatory and jurisdiction over that subject was left where it has always been, namely, in the Federal Government.

It will further be observed that the Enabling Act makes no distinction upon this subject between Indians and the other races, so that whatever may have been the policy of the Federal Government towards the Indian prior to the inauguration of the State Government it did not authorize or direct the State to make any distinction, and no such distinction has in fact been made by the State. There is therefore, no force in the allegations of the bill that:

“\* \* \* and that in said Act (Enabling Act) no reservation or exception was made whereby any one of the defendants might import into the said named portion of said State, or in any other manner, furnish any intoxicating liquors whatsoever, and the power to regulate interstate commerce in intoxicating liquor was thereby surrendered to the State of Oklahoma as to said portions of said State.” \* \* \* (Original bill, p. 5.)

nor in the allegations of the bill that:

“\* \* \* and thereby (by virtue of the State constitution and the Enabling Act) the State is obligated in the stead and place of the United States, so far as the power is lodged in it, to carry



out the treaty and agreements made with the said Indian Tribes against the introduction, sale, or in any manner the furnishing of intoxicating liquors in what was formerly the Indian Territory \* \* \*” (Original bill, p. 8).

It is not necessary in a consideration of this case to determine what power remains in the Federal Government over the Indians in the State of Oklahoma, nor what power the Government now exercises over these Indians because the bill is not asking relief under any Federal law or statute. The State in the case attempted to be made by the bill recognized that whatever right it has is predicated upon the State laws passed in the exercise of its sovereign capacity as a State. That this is true appears from that portion of the bill as follows:

“And that the State of Oklahoma under and by virtue of said Act of Congress, its said Constitution and said laws in said State, would hold all shipments made by each of the defendants whereby either of them undertook to receive at points without the State of Oklahoma intoxicating liquors of any kind, and to transport, carry or otherwise convey such liquors or compounds to or to the order of any of the persons, companies, corporations, firms or associations named in said list, as illegal, contrary to good morals, against the public policy and in direct violation of the positive laws of the State of Oklahoma. \* \* \* and that all shipments or deliveries made by defend-

ants by interstate shipment to any or all of the persons named in said list (those holding Federal licenses) were intended for and were for the violation of the laws of the State of Oklahoma and to commit a public nuisance in said State.” (Original bill, pp. 94 and 95.)

The holders of Federal licenses named in the bill are not confined to that portion of the state which was formerly the Indian Territory, the Osage Reservation and Indian reservations on January the 1st, 1906, but they appear to reside in various portions of the state, many of them residing in what was formerly Oklahoma Territory. By no stretch of construction can it be said that the Federal Government indicated any policy or custom with reference to that portion of the state which was formerly Oklahoma Territory.

That the state liquor law does not provide nor contemplate the total prohibition of interstate traffic in intoxicating liquors is apparent from certain provisions of that law. Article 3, Section 18, provides:

“It shall be unlawful for any person to whom any liquors the sale of which is prohibited by this Act, shall be consigned whether consigned to him in his own name or in a fictitious name, to give any other person an order for any such liquors to any railroad company, express company, or other common carrier, or to any officer, agent or employe of any railroad company, express company or common carrier, with the intent and for the purpose to enable such other person to get or receive

any such liquor for himself or for any other person or persons other than the consignee. Any person violating the provisions of this section shall be guilty of a misdemeanor."

Article 3, Section 20, provides:

"It shall be unlawful for any railroad or other common carrier, or agent thereof, or any other person, individual or corporate, to ship, receive, transport, carry, handle or deliver any liquors, the sale of which is prohibited by this Act, under a false or fictitious name or title, and any person who shall knowingly violate any provision of this section shall be deemed guilty of a misdemeanor and all liquors shipped under any such fictitious name or title, or to a fictitious person, shall be forfeited to the state."

It will be noted that this legislation is along the lines of the Federal penal act, and while recognizing the right to receive interstate shipments of liquor endeavors to have such shipments handled in a manner that will least hamper the state in obtaining the facts sufficient to determine whether or not there is a violation of the law, and if so, who shall be charged with such violation.

Furthermore, in this connection, it will be noted that the contention of the State is contradictory. It seeks to wholly prevent the introduction of liquor into those parts of the State named in the Enabling Act and spe-

cifically designated in the bill and rests its right to do so upon this Act, while the Act in express terms authorizes the introduction of liquor into such parts of the State and contains an elaborate scheme for the sale and disposal of liquors therein under its dispensary provisions. These dispensary provisions have been carried into the State law in pursuance of the provisions of the Enabling Act, and the State is obligated to maintain dispensaries for the sale of liquors to carry out the requirements of the State law. If the prayer of the State be granted it would be precluded from observing the law, because if its contention is correct, the State would have no greater authority to sell or otherwise dispose of liquors than the carriers would have to convey liquors into those parts of the State above enumerated. If any prohibition exists (which is not conceded) by reason of any Indian Treaties or governmental policy, it must necessarily follow that all parties come within the terms of such prohibition.

The question of the duty of common carriers to convey interstate shipments of liquors into those parts of the State enumerated in the Enabling Act and what influence, if any, Indian Legislation has upon such duty was presented and considered in the District Court of the Western District of the State of Arkansas in the case of *United States vs. United States Express Company*, 180 Federal Reporter 1006. The Express Company had declined to convey interstate shipments of liquor from points outside of the State of Oklahoma into that part of the State which was formerly the

Indian Territory. A petition for mandamus was filed by the United States on the relation of Louis Freidman and another, doing business as Freidman and Company, against the Express Company, seeking to require the Express Company to accept and carry such shipments of liquor. District Judge Rogers delivered a written opinion and among other things said:

“It must therefore be conceded that, when Oklahoma was admitted under the Federal Constitution into the Union as a State, the act of admission gave to her all the powers and devolved upon her all the duties which belong to the other States under the Constitution, anything in the Enabling Act to the contrary notwithstanding. She could come into the Union in no other way. By virtue of the Constitution her admission fixed her status and that of her people, to the people of other States, to the other States themselves, and to the Federal government. Congress cannot exact of a State—even a State coming into the Union—the surrender or waiver of any of the constitutionally inherent powers of sovereignty under the Constitution or such as belong to the original States; nor can a State either surrender or stipulate away any of its sovereignty or render herself less sovereign than the other States: Bearing these principles in mind, Congress knew that the moment Oklahoma was admitted into the Union as a State, that the laws regulating interstate commerce must apply to Oklahoma as to all the other States; it knew that

the power over intrastate commerce would inure to the State of Oklahoma by the act of admission; it knew that Oklahoma must enact its own laws regulating intrastate commerce, for the simple reason that the power to enact such laws had not been granted to Congress; it knew that the great body of laws traceable to the police power of the State must be enacted by the State for the same reason. Congress knew that intoxicating liquors were articles of commerce, so far as the interstate commerce law was concerned, and that no State could prohibit their introduction within its borders."

And it is further said:

"Now, let us look a moment to that part of the Enabling Act quoted above. Its scrutiny discloses that it simply required that Oklahoma should make that part of the Enabling Act in relation to the manufacture and sale of intoxicating liquors a part of its constitution. Indeed, the incorporation of that provision of the Enabling Act into the Constitution of Oklahoma was made a condition precedent to its admission into the Union. Oklahoma complied with it and was admitted. On its face Congress did not undertake to enforce the Enabling Act; it did not seek to force Oklahoma into the Union. The very last sentence of that part of the Act quoted shows that

Congress intended that Oklahoma should adopt and then enforce it. It says:

‘Upon the admission of the State into the Union these provisions shall be immediately enforceable in the courts of the State.’

What was the purport of the provisions which were to be enforceable by the State? They were not provisions forbidding the introduction of intoxicating liquors into the State of Oklahoma. Neither Oklahoma nor any other State has any power to regulate interstate commerce. That power has been confided by all the States to the Congress. It is a plenary power, and all the legislation that is valid relating to interstate commerce is traceable to that power. Congress could not delegate its exercise to a State. To do so would be a violation of its duty to every other State and an abdication of its constitutional functions to that extent. That Congress realized this is manifest from the very terms of the Enabling Act. The act dealt solely with the manufacture and disposal of intoxicating liquor within that part of Oklahoma known as the Indian Territory, and the shipment and conveyance of intoxicating liquors from other parts of the State of Oklahoma into the Indian Territory and into certain reservations within the State. These were provisions clearly within the police power of the State, and properly enforceable by the State, in the event Congress saw fit to withdraw its jurisdiction from over the Indians.” \* \*

“But the Act went further; it provided for the sales of intoxicating liquor under certain stringent restrictions in certain towns in the Indian Territory of 2,000 population, and, if there were no such towns in any county, then for one place for the sale of intoxicants in each of such counties, and also for certain other sales not necessary to mention, but which appear in that Act. Those parts of the Enabling Act to which I have just referred do not purport to be enforceable by the Federal government, nor were they to be enforceable by Oklahoma until it became a State. If Oklahoma had declined to accept the terms of the Enabling Act and to become a State of the Union, the provisions referred to would not have been enforceable at all. The logic of the argument to the effect that the Enabling Act repealed the intercourse Act of January 30, 1897, leads to the conclusion that the Enabling Act, having repealed the intercourse Act, left the Indian Territory, from the date of the Act until Oklahoma was admitted as a State, without any protection whatever from the introduction of liquor into it. Such a result could not have been in the contemplation of Congress, or it never would have provided the protection for the Indian contained in the Enabling Act itself.”

On the 22d day of January, 1910, in a case pending in the Circuit Court of the United States within and for the Western Division of the Western District of Missouri, at Kansas City, Missouri, entitled Dan Dan-



cinger, A. Dancinger, Jack Dancinger, M. O. Dancinger and Joseph Dancinger, partners, doing business under the firm name and style of Dancinger Brothers, and the Harvest-King Distilling Company, plaintiffs, vs. the Missouri, Kansas & Texas Railway Company, defendant, the Honorable John F. Phillips, Judge of that court, issued a temporary injunction against this defendant, mandatory in character, ordering and directing it to accept from the complainants in said suit for shipment from the State of Missouri into the States of Kansas and Oklahoma, for carriage over this defendant's line of railroad all packages and receptacles containing liquors consigned to designated consignees and in the regular course of business in interstate transportation. The injunction order granted by Judge Phillips is as follows:

“This cause coming on for hearing upon the order upon Respondent to show cause, if any, why a temporary injunction should not be issued herein.

“The complainant and the respondent appearing by their respective counsel the matter was taken up and submitted to the Court, and the Court being fully advised in the premises on reading the bill of complaint.

It is ordered and decreed that a temporary injunction herein be, and is granted, mandatory in character, ordering and directing the respondent,

Missouri, Kansas & Texas Railway Company, to accept from complainant for shipment from the State of Missouri into the States of Kansas and Oklahoma for carriage over the defendant's line of railroad, all packages and receptacles containing liquors consigned to designated consignees therein in the regular course of Interstate transportation of commerce within the requirements of Sections 238 and 239 of Chapter 9, entitled, "Offenses against Foreign and Interstate Commerce," under an Act of Congress to codify and amend the penal laws of the U. S. and subject to the reasonable rules and traffic regulations of the defendant. This order to be effective upon the complainant executing the usual injunction bond to be approved by the Judge of this Court, in the sum of \$5,000.00.

"This cause is continued for further proceedings."

A bill similar to the one now before this Court was filed shortly after the advent of Statehood by the State on the relation of the Attorney General, in the District Court of Carter County, Oklahoma, against the several railroad companies and express companies operating in this State. The only difference in the defendants being that the suit in the State court did not include the Pacific Express Company, which is named as a defendant in the bill before this court and did include the Arkansas and Western Railway Company. The Oklahoma Central Railway Company, the Poteau

Valley Railroad Company, the Adams Express Company and the United States Express Company. The relief prayed in the two bills is similar. District Judge Stillwell H. Russell overruled the demurrer of the State to the answer of certain defendants, and sustained the demurrer of certain defendants to the bill of the State, denying *in toto* the relief sought. The case was not appealed to the Supreme Court of the State. The case on behalf of the State was argued by General Attorney Charles West in person. Judge Russell delivered a written opinion in support of his rulings. While the defendant does not approve all of the reasoning contained in the opinion, it is contended that the conclusion therein reached was correct. This opinion is not accessible except from the records of the Court wherein it was rendered and it will, for the convenience of this Court and in order that the Court may be advised as to the history of this litigation, be quoted herein in full:

OPINION OF THE COURT.

‘This suit is brought by the Attorney-General of the State of Oklahoma against the above named defendants and the petition, in substance, alleges that the defendants are each corporations, incorporated under the laws of other States than the State of Oklahoma and that the railroad corporations named herein are all operating railways in the various counties of the State of Oklahoma, and that the express companies, defendants herein, are also operating in the various counties in the State of Oklahoma.

“The petition alleges that previous to the 16th day of November, 1907, what is now the State of Oklahoma was divided into the Territory of Oklahoma and what was formerly the Indian Territory; that all of the land in the Indian Territory was owned originally by various tribes of Indians and that in each and every case an agreement was made with the said Indian tribes affecting said lands by the United States Government that the said lands should be divided and allotted in severalty among the members of the said tribes, with certain special exceptions named in the treaties, and that in each and every case a contract and solemn treaty was entered into and made between said Indian Tribes and said United States to the effect that the United States agreed to maintain strict laws in all of said territory, and particularly in the lands thereby agreed to be allotted, against the introduction, sale, barter, or giving away of liquors and intoxicants of every kind or quality.

That this agreement on the part of the United States and this contract was in pursuance of its custom and duty to protect the persons and property of the said Indian Tribes from the degenerating influence of intoxicating liquors, under the authority vested in the Congress of the United States to govern said Indian Tribes.

That in pursuance of said treaties and contracts and the custom and duty of the United States therein, the Congress of the United States, by an Act approved June 16th, 1906, provided for the admission

into the Union of a State formed out of what was formerly the Indian Territory, and what was formerly Oklahoma Territory, and that the same should be admitted upon terms of equality with the other States; but expressly providing that the United States should be left in control of the Indians and Indian tribes and their property, and expressly providing, as one of the conditions precedent to the admission of the said State into the Union, that the manufacture, sale, barter, giving away, or otherwise furnishing, except as therein provided, of intoxicating liquors within those parts of the State then known as the Indian Territory, and the Osage Nation, and within any other parts of the State which existed as Indian Reservations on the 1st day of January, 1906, was prohibited for a period of twenty-one years from the date of the admission of the State into the Union.

The petition further shows that by the Constitution of this State it was provided that all contracts existing at the time of the admission of the State into the Union and all rights, including all agreements, treaties and rights growing out of the same, made with any Indian or Indian Tribe, for his or their benefit, should be and exist as though no change in the form of the government had been made to that of the State of Oklahoma.

That it was further provided that the terms and conditions of the Act approved June 16th, 1906, was accepted, including the provision against the furnishing of intoxicating liquors in what was formerly the Indian Territory by any person whatsoever, or in any manner

whatsoever; and that the defendants, in violation of the law and their rights therein, and in injury to the rights of this State and the inhabitants of this State, have openly, notoriously, persistently and continuously violated all of said provisions against the introduction of intoxicating liquors into what was formerly the Indian Territory, by introducing, furnishing, carrying and conveying into the same on divers and sundry occasions, numerous and various kinds of beer, ale, wine and intoxicating liquors; that the violation of the law therein is deeply injurious to and destructive of good citizenship and of the property of the State and its inhabitants, and that said defendants threaten to continue the said violations unless restrained from so doing, and that in continuing so to do the defendants and each of them have committed acts which amount to a surrender and abandonment of their corporate rights in this State to do business in the State, and that against said acts the plaintiff has no adequate remedy according to the course of the common law.

The petition concludes with the prayer that the defendants and each of them be enjoined and restrained from further introducing, conveying and furnishing intoxicating liquors, etc., in any form, into any place, at any time and in any manner into said State, within the limits of what was formerly the Indian Territory, including the Osage Indian Reservation, and into any other parts of the State which existed as Indian Reservations on the 1st day of June, 1906. That in default of obedience of said defendants to said order of injunction prayed for that their corporate rights in

this State be forfeited; and for costs of this action and such other and further relief as the equities of the case may warrant.

The defendants, the Gulf, Colorado & Santa Fe Ry Co., Atchison, Topeka & Santa Fe Railway Company, the Missouri, Kansas & Texas Railway Company, Kansas City Southern Railway Company, St. Louis and San Francisco Railroad Company, the Chicago, Rock Island & Pacific Railway Company, Fort Smith and Western Railway Company, and the Eastern Oklahoma Railway Company, each file an answer denying each and every allegation in said petition, except that which is hereinafter stated as being admitted.

They answer that they are corporations under and by virtue of the laws of other States than Oklahoma and as such are not domestic corporations of the State of Oklahoma, and that they are operating and maintaining in and through the State of Oklahoma and other States of the Union certain lines of interstate railways, and that they do now and have for a long time past been carriers of interstate commerce and have, amongst other articles of interstate commerce carried to various points in the State of Oklahoma such liquors as were offered them at points outside of the State of Oklahoma, for transportation and carriage as such interstate carriers to points inside the State of Oklahoma, including points in what was formerly on June 16th, 1906, known as the Indian Territory and have delivered said interstate consignments of liquors at such points of destination in the State of Oklahoma to the original consignees named by the

original consignors and to no one else. And that all of said points where said deliveries of interstate shipments were made are wholly within the various town-sites to which the Indian Title was long prior to June 16, 1906, wholly extinguished, in accordance with the laws of the United States.

They further answer that other than said interstate shipments of liquors they have been and are now carrying shipments of liquors between points wholly within the State of Oklahoma that may be offered to them by officers of the State of Oklahoma, acting under the liquor laws in force in the State of Oklahoma; and that all said intra-state shipments have been made in accordance with the laws of the State of Oklahoma, and that the various interstate and intra-state shipments above referred to have included beer, wine, ale and other intoxicating liquors, and the defendants state that as to said interstate shipments of liquors above referred to they are controlled wholly by the Constitution and laws of the United States and not by the Constitution and laws of the State of Oklahoma and that they are entitled to make such shipments in accordance with the Constitution and laws of the United States.

Further answering, the defendants deny that this action is brought by proper authority in the name of the State of Oklahoma.

The defendants, the American Express Company, the United States Express Company, and the Wells Fargo Express Company, answer by filing a general denial and the State dismissed the action as to them.

The defendant, the Oklahoma Central Railway Com-



pany, filed its plea in abatement, which was confessed and therefore sustained.

Defendants by demurrer to the petition object (1) that it does not state a cause of action, and (2) that this court is without jurisdiction to grant the relief prayed for.

The Attorney-General, for the State of Oklahoma, demurs to the answer of the defendants, because, as he alleges, it is apparent upon the face thereof that said answer does not state facts sufficient to constitute a ground of defense to plaintiff's petition.

At the hearing the court held that it would consider all the questions presented by the pleadings and pass upon same at one and the same time, which was accepted by counsel. The cause was submitted upon oral arguments of the Honorable Charles West, for the State, and Honorable S. T. Bledsoe, Honorable Clifford Jackson, Honorable Thomas T. Chambers, and Honorable J. F. Sharp, on behalf of the defendants.

The Attorney-General, in support of his contention that the various defendants had been guilty of introducing liquor into the Indian Territory from other States, among other views presented, relied particularly upon one or more of the provisions of what is known as the Enabling Act and some of the provisions of the Constitution which shall be referred to hereafter.

We are referred by him to Section 507 of Bunn's Ann. Constitution of Oklahoma, which reads as follows:

“That the manufacture, sale, barter, giving away or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within those parts of the State now known as the Indian Territory and the Osage Indian Reservation, and within any other parts of said State which existed as Indian Reservation on the 1st day of January, 1906, is prohibited for a period of twenty-one years from the date of the admission of the State into the Union, and thereafter until the people of said State shall otherwise provide by amendment to the Constitution and proper State Legislation.”

He urgently insisted that the words “or otherwise furnish” found in that section, meant and should be construed as meaning an “introduction,” and that it being admitted that the defendants, as common carriers, brought liquors from other States into the Indian Territory, it was a furnishing of liquor in contemplation of the section of the act referred to and therefore a violation of the law.

In aid of this contention he insists that all the dealings and treaties and agreements that the United States has had with the Indians since the foundation of the Government of the United States authorizes the construction that he gives to the words “or otherwise furnish.”

We are further cited by the Attorney-General to section one of the Schedule of the Constitution (Bunn’s Const. Sec. 450), which reads as follows:

“No existing rights, actions, suits, proceedings, contracts, or claims shall be affected by the change in the form of Government, but all shall continue as if no change in the form of Government has taken place.”

And to section two of the Schedule (Bunn's Const. Sec. 451), which reads:

“All laws in force in the Territory of Oklahoma at the time of the admission of the State into the Union, which are not repugnant to this Constitution, and which are not locally inapplicable shall be extended to and remain in force in the State of Oklahoma until they expire by their own limitation, or are altered or repealed by law.”

There are three points in the presentation of the State's case that were kept prominently before the court by the Attorney-General, namely (1) that the word “furnish” as used in the section above quoted of the Enabling Act was broad enough in its meaning to include, and in his opinion, does include, the introduction of liquor into the State from points outside of the State.

(2) That in view of the fact that the United States had for a long period of time, recognized it as duty encumbered upon the people of the United States to protect the Indian from the baneful and pernicious effects of intoxicating liquors and that such duty resulted in the establishment of a right upon the part of the Indian to be so protected. And that the people

of Oklahoma, by enacting the first section of the Schedule above referred to, assumed the obligation imposed upon them by the policy of the United States Government to continue the recognition of that right of the Indians and undertook its enforcement—in other words, so far as that duty and that right were concerned, that the State stepped into the shoes of the National Government.

And (3) that by the enactment of section two of the Schedule above quoted, declaring that all the laws in force in the Territory of Oklahoma at the time of the admission of the State into the Union which are not repugnant, etc., shall be extended and remain in force in the State of Oklahoma, as a matter of organic law, made it obligatory upon the courts of this State to punish the introduction of liquor into that portion of the State which was formerly the Indian Territory, in recognition of the existing right of the Indian.

To sum up the argument of the Attorney-General, it was an insistence that it is the Indian's right to be protected by the State from the introduction of liquor into any portion of this State; that what was formerly the Indian Territory still remains Indian country, so far as the purpose of the prohibition of the introduction of liquor is concerned; that the words "or otherwise furnish", in the section of the Enabling Act above quoted means "introduction"; and that therefore if the defendant railroads brought liquor into the Indian Territory part of the State from any other State, it was in violation of the law; and that it is the duty of the State courts of Oklahoma to enjoin such

a furnishing or introduction of liquor, under the authority found in the constitution in the provisions heretofore cited.

For decision of the question presented to the court, the matters for our determination are, whether there is a duty upon the part of the State of Oklahoma, imposed by the Enabling Act and the provisions of the Constitution of Oklahoma, to prohibit the introduction of liquor by the defendants from points outside of the State, and does the power lie with the courts of the State to prohibit such introduction; and if so, where is the authority for it that makes it obligatory upon the State to exercise such power?

It is not our purpose in this ruling to call in question the power of Congress to enact such laws and measures as in its judgment may be deemed necessary and right to prevent the introduction of liquor into an Indian Country, or into an Indian Reservation, wherever situated, under its constitutional power to absolutely regulate all commerce with the Indians of the United States, so long as their title to the tribal lands which they occupy has not been extinguished. Nor is it our purpose to question the right of the United States courts to try and determine any such violations of the laws of the United States, because we think that the right of Congress to do the one and the United States Courts to enforce the other is separate and distinct from any right, jurisdiction, or authority of the State.

Has the Congress of the United States, by any legislation, including the Enabling Act, whether with or without the concurrence of the State of Oklahoma,

made it obligatory upon the State of Oklahoma to assume jurisdiction and enforce the laws and treaties made by the Government of the United States with the Indians, whether they pertain to Indian country or any other section?

The jurisdiction of the courts of a State and that of the United States, as pertinent to the matters under consideration, are as distinct and as clearly defined in our judgment as it is possible to make them under our system of Government.

It is conceded that the United States has full police power of regulation over Indian reservations, although situated within the limits of a State; and, upon the other hand, it cannot be denied that the State has the capacity of asserting absolute power of regulation in all matters pertinent to and in connection with a violation of the enactments of the State and coming within its power to do so and perform for the good of the people of the State—in other words, that it is sovereign in the exercise of police power over the citizens of the State.

Now, has the State of Oklahoma, by accepting the **terms and conditions of the Enabling Act**, as a condition precedent to its admission as a State into the Union, in any of the provisions of said Act, undertaken, through its courts, or otherwise, to provide against the introduction of liquor in the manner complained of in the petition herein, and has it thereby obligated itself, as a matter of good faith, or in any other way, to do those things which, in our opinion, would constitute

an interference with the jurisdiction of the United States Courts in this regard.

In the consideration of the matters submitted to the court, involving as they do, the relations between the States Courts and the United States Courts, and, as well, the State government and the National government, it is not necessary to announce any new rule of action or construction, as it is to see to it that the demand for enlarged powers upon the one hand, or undue submission to a greater power upon the other, does not confuse and lead us astray from the rule that recognizes the equality of all the States.

The Enabling Act expressly provides that the purpose of the Union of the Oklahoma and Indian Territories was to form a State which would be "admitted to the Union on an equal footing with the original States" (Bunn's Ann. Const. Sec. 501).

If the State of Oklahoma was admitted upon an equal footing, what rule of construction can be invoked that would admit of a limitation upon her powers as a State that does not apply to all of the States alike?

What was imposed upon the inhabitants of the two territories, as a condition precedent to the Presidential proclamation acknowledging Statehood, is another question, but not such as to challenge Equal Sovereignty.

And if anything is required of Oklahoma, as a State, to do, not consistent with the obligations of other States, it would be an attack upon the equal sovereignty promised and which, as a State, she has the right to enjoy.

Referring to the Enabling Act (Bunn's Ann. Const. Sec. 503), we have a section that has an important bearing in determining the duty of the State in the matter presented by the Attorney-General and which indicates to our mind an agreement upon the part of the State, by the framers of the Constitution, to steer clear of all those matters attaching to the Indian while the title to his tribal lands remain unextinguished and not to limit or affect the authority of the United States Government in dealing with them as such. That section reads as follows:

“Provided, That nothing contained in the said Constitution shall be construed to limit or impair the rights of persons or property pertaining to the Indians of said Territory (so long as such rights remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreements, law, or otherwise, which it would have been competent to make if this Act had never been passed.”

Whatever existing rights the Indian as such had when the Constitution was accepted were recognized in section 450 (Bunn) of the Schedule, in due regard to the rights preserved to him in the section of the Enabling Act just quoted; and those rights to remain unimpaired in the United States to preserve for him as is agreed to by the terms of said section.

Keeping in view the rights referred to and preserved



to the Indian as such by the foregoing section (503), let us see by reference to the treaties made with the Chickasaws, Choctaws, Creeks, Seminoles and Cherokees what are among the rights mentioned and with what forum is the duty lodged to enforce without impairment the right against the introduction of liquors, etc.

The Act of June 28th, 1898, Sec. 29, has the following provision:

“And the United States agrees to maintain strict laws in the territory of the Choctaw and Chickasaw tribes against the introduction, sale, barter, or giving away of liquors and intoxicants of any kind or quality.”

(Kappler's Laws & Treaties, Vol. 1, p. 651.)

Section 40 of the Creek Treaty of March 1st, 1901, is as follows:

“The United States agrees to maintain strict laws in the territory of said nation against the introduction, sale, barter, or giving away of liquors and intoxicants of any kind or quality.”

(Kappler's Laws and Treaties, Vol. 1, p. 661.)

The agreement with the Seminoles is found in the Act of Congress, July 1st, 1898, 30 Stats., 567, and is as follows:

“The United States agrees to maintain strict laws in the Seminole country against the introduc-

tion, sale, barter, or giving away of intoxicants of any kind or quality.”

Article 27 of the Treaty with the Cherokees of 1866 (Kappler’s Laws and Treaties, p. 731) contains this provision :

“The United States shall have the right to establish one or more military posts or stations in the Cherokee Nation, as may be deemed necessary for the proper protection of the citizens of the United States lawfully residing therein, and the Cherokee and other citizens of the Indian country. But no sutler or other person connected therewith, either in or out of the military organization, shall be permitted to introduce any spiritous, vinous, or malt liquors into the Cherokee Nation, except the medical department proper, and by them only for strict medical purposes.”

Can it be doubted from the foregoing excerpts from the treaties with all of the Five Tribes, whose territorial limits on the 16th day of June, 1906, formed what was then known as the Indian Territory, that the United States pledged itself to maintain strict laws in the territory of said nations against the introduction, sale, barter, or giving away of liquor of any kind whatsoever? Did the United States agree to delegate the authority, which has ever been zealously and jealously exercised, to any of the States? The authority being with the United States to maintain the laws,—that is, to enact strict laws, was it through the State or the

United States Courts such strict laws were to be enforced? Upon what courts was jurisdiction conferred? Can any one of the States enact laws for the courts of another State to enforce? If not, why not? Because the State line ends the sovereignty of each. The United States is but a group of sovereignties, with each one of its independent parts complete as a whole in the regulation of its own internal affairs.

While Congress has the power to make laws and compel their observance by all the citizens of a State, and for an infraction of them to proceed in the Courts of the United States, yet it has no power to make laws and relegate the enforcement of them to the courts of a State.

By section 21 of the Enabling Act (Section 538 of Bann's Ann. Const.) the laws of the Territory of Oklahoma are extended over the State of Oklahoma, but that section concludes with the following significant provision:

“And the laws of the United States, not locally inapplicable, shall have the same force and effect within said State as elsewhere within the United States.”

The same force and effect, *and no greater force and effect* in one State than in another, is the evident intent and meaning of the provision quoted.

Section 2139, U. S. Rev. Stats., as amended by the Act of July 23, 1892 (27 Stat. at large, 260), prohibiting the introduction of any kind of intoxicating liquors, under any pretense, into the Indian Country, etc., is

not "locally inapplicable" in States within the limits of which there are Indian Reservations, but can it be successfully contended that because such a statute is in force in such localities that any court, other than a United States Court, has jurisdiction over the offender or the offense?

It seems clear that it is only by reason of the fact that the introduction of liquors is made into a Reservation or Indian Country that the act constitutes an offense, and being so, the Statute (2130) is applicable and requiring the United States Courts to take jurisdiction and enforce the law.

It is only in a body of territory in which, at the time, the Indian title is not extinguished that the statute applies.

In other words, unless there is a different provision in the treaty or Act of Congress, the country referred to as Indian Country ceases to be such when the Indian title is extinguished.

This principle is affirmed in the well considered case of *Bates vs. Clarke*, 95 U. S., p. 204, and is cited with approval in *Geo. Dick vs. United States*, *Advance Sheets* April 1, 1908, page 402. In the latter case Mr. Justice Harlan said:

"If the case depended alone upon the Federal liquor statute (2139) forbidding the introduction of intoxicating drinks into the Indian Country, we should feel obliged to adjudge that the trial court erred in not directing a verdict for the defendant; for that statute, when enacted, did not intend the words 'Indian Country' to embrace any body of

territory in which, at the time, the Indian title had been extinguished . . . ”

But for the stipulations between the United States and the Nez Perces Indians, upon the admission of Idaho into the Union, the Dick case would never have been written. There are no such stipulations attached to the admission of Oklahoma, between any tribe and the United States. It was agreed with the Nez Perces Indians that all the lands of their original reservation, *as well as their allotments*, should remain subject to the Federal laws prohibiting the introduction of intoxicants into the Indian Country, for a period of twenty-five years. In other words, that such lands should be, for such purposes, treated as Indian Country, and, as stated by us, that but for such a provision, the Dick case would have been unknown to judicial literature.

In the Idaho admission, the United States and the Indians agreed against the introduction of liquor for twenty-five years and that the United States should keep in force section 2139, with its own jurisdiction applied; and but for this agreement, the authority given Congress by the Constitution to regulate commerce with the Indian Tribes would not have applied.

While Congress has the power to *regulate* commerce between the States, yet it has never attempted to *prohibit* commerce between the States, but in the exercise of express powers granted by the Constitution of the United States, it has passed statutes prohibiting the introduction of liquors into an Indian country, thus

drawing the distinction in the exercise of its powers to do the one and not to do the other.

On a recent occasion, in the United States Senate, in which the question of prohibiting commerce between the States was under discussion (and, as we remember it, the question was upon the introduction of liquor), the right of Congress to do so was doubted and further attempt to thus legislate was abandoned.

We refer to this as indicating the meaning of Congress and the construction to be placed upon section 21 of the Enabling Act (Sec. 507 Bunn's Ann. Const. Oklahoma). It is evident to our mind that it was the purpose of Congress, in the section referred to, not to prohibit the *introduction* of liquors into what was known as the Indian Territory, and the Reservations referred to in the section, but to prohibit the manufacture, sale, barter, giving away, or otherwise furnishing, except as in the section provided, of liquors into what was then known as the Indian Territory, etc.; also to prohibit the shipping of liquors from other parts of the State into the portions hereinbefore described. The failure to prohibit the introduction into States theretofore is consistent, we think, with the purpose evidenced by the language used in section 21 of the Enabling Act.

But the Attorney-General strenuously insists that the words, "or otherwise furnish" were intended to mean, and in his opinion do mean "introducing." And in support of his theory that the words quoted do mean "introducing" and its interchangeable term "introduction," he refers us to a Vermont statute which de-

finer the word "furnish" to mean introduction or introducing.

Such a contention involves the anomaly of making the settlement of solemn governmental problems hang upon a mere construction or play upon words that seeks to invest them with a meaning at variance with their general acceptance and with the heretofore recognized policy of Congress not to prohibit commerce between the States.

The term "furnish" seems to have furnished its own meaning until Vermont conceived the necessity of changing what all lexicographers understood it to mean, and the fact that a statute was necessary to give the term a radically different meaning might be accepted as an admission that the lexicographers are right, but that in Vermont alone it should have an opposite meaning.

In our opinion, the use of the phrase "or otherwise furnishing" is the doing of an act or acts in evasion of a direct gift, barter, or sale and the doing of such evasive acts in a way or manner that would constitute in law a barter, gift or sale; the employment of any pretext or subterfuge which the law would characterize as an attempt to cover up the purpose of the offender; the use of surreptitious methods that would, in the belief of the offender, constitute a state of facts that would circumvent the ordinary meaning of the words "gift, barter, or sale," and thereby "furnish" an escape.

Unless the statutory definition of the word "furnish" given by the Vermont Legislature shall be ac-

cepted by the Courts of all the other States as an "introduction" to a new meaning to be given to that term, we must be permitted, in all deference to the eminent learning of the Honorable Attorney-General and the dignity of his official station, to say that we are unalterably opposed to accepting the meaning furnished by the Vermont Statute and endorsed by him, believing, as we do, that such an interpretation of that term is an absolute contradiction of the meaning of the word as generally understood and of the meaning intended to be conveyed by its use in the connection under discussion.

Congress in its treaties with all of the Indian Tribes, while guaranteeing to maintain strict laws upon the subject of intoxicants, uses the word "introduction" and has certainly thereby demonstrated that it has always thoroughly understood the meaning attached to that word. Is it reasonable to suppose, then, that when it came to enact so important a piece of legislation as an Enabling Act, bringing a new State into the Union, that it intended to depart from its policy (whether founded in lack of power or otherwise) not to prohibit commerce between the States, by a prohibition against the introduction of liquor into this State and yet cast aside the word it had always employed to convey such a meaning and choose one which in its general acceptance had no such meaning?

The reason for its failure to so use the word in this instance is obvious enough,—that when dealing with the Indian Tribes Congress recognized its right to



prohibit commerce, hence used the word "introduction," but when dealing with a State, the right to prohibit commerce was not recognized though the right to regulate was, hence it imposed the obligation upon the State which it knew was clearly within its power to impose, and that only, and which the State, in accepting, had the right to enact into law and to enforce.

It is well understood that a State cannot prohibit commerce with other States, and yet to give the word "furnish" the interpretation insisted upon by the Attorney-General is an attempt to put the State in the false position of trying to do indirectly what it is prohibited from doing directly, that is, prevent the shipment of liquors into the State,—in other words, prohibit commerce with other States.

For a great number of years, the Indian has been treated as a ward of the Nation and the United States had undertaken to maintain strict laws against, not only the introduction of liquor, but the use of it in any way, except for medical purposes, among them, so long as the relation of dependency existed. So long as they remained subject to the laws of the United States and their own tribal government, such a policy on the part of the General Government met with no opposition by the States, possibly for the reason that the States recognized that the Indian was in a condition of isolation, freed from the obligations of State citizenship, hence one central head should control their affairs. Under the then existing conditions it is easy to understand why certain prohibitory legislation should be enacted in their relation to the outside world and so long as

the same conditions existed the same reason for Government protection existed.

Congress has made the Indian a citizen of the United States and this makes him a citizen of the State wherein he resides and he becomes subject to its laws both civil and criminal. (Slaughter House cases, 16 Wallace, 36; Heff case, 197 U. S. 497, et seq.)

Individual titles have taken the place of tribal titles to lands, and in the sporadic exceptions to this condition the Federal Statute prohibiting the introduction of liquor applies and the United States Courts have the duty imposed upon them to enforce such laws, and with which the State Courts have no connection, for the reason, if no other, that the State has no such laws to be violated.

Mr. Justice Brewer, in the Heff case, decides that when citizenship attaches the Government is under no constitutional obligation to continue its relationship to the Indian and can so abandon that relation as to make the Indian assume and be subject to all the privileges and burdens of one *sui juris*.

It is as a citizen that the State courts can deal with him, and being a citizen the State will exercise the same jealous care in the protection of him and of his rights as such as is due to every other citizen within her jurisdiction. The State Courts are open to right his wrongs and her laws are as much for him as can possibly be claimed for another. In the forum of the law Oklahoma recognizes no racial distinctions. Equality before the law and justice from the law are the rights of the Indian citizen of our State, and whether or not

those rights existed before a change in the form of government, they certainly exist now.

We repeat that the Enabling Act does not prohibit the introduction of liquors, either in express terms, or by implication, and we do not doubt that the omission by Congress was intentional, in deference to the prerogatives of an incoming sovereignty, and its purpose not to exercise a power not theretofore asserted. Therefore, it is our opinion that Oklahoma, in accepting the terms and conditions of that Act, did not agree upon any condition to prohibit the introduction of liquors, as complained of in the petition herein, and had this State understood that such was the agreement and her courts would sanction it, the United States courts would in fact, do what the Honorable Attorney-General is now seeking to do.

Hence we say that Congress had no such purpose in view; that the Constitutional Convention gave no intimation in the Constitution that such a purpose was agreed to; that the approval of the Constitution by the President of the United States and his Attorney-General is another evidence that such an agreement was not contemplated; and that the legislature of Oklahoma has adjourned without an intimation from it that such an agreement was contemplated by the Enabling Act or by the makers of our Constitution.

We have carefully scrutinized the Enabling Act, the Constitution of Oklahoma, and what is known as the Billups Bill, to say nothing of every law affecting the Indian, to find warrant for the opinion that Oklahoma was either morally or legally obligated to even make

the attempt to prohibit the introduction of liquor, much less the authority and power to do so, and we find ourselves driven to the conclusion that for this court to grant the injunction prayed for would be wrong and so lacking in judicial effect and credence as to make it appear that the courts of this State were grasping for the exercise of greater authority than was ever contemplated by the greed of Federal power, and to this we will not lend our consent.

Section 507 (Bunn) of the Enabling Act is reproduced in the prohibition amendment to the Constitution of this State and in the Legislative Act (The Billups Bill) and by such laws it is expressly shown that the State is absolutely sincere in its purpose to faithfully comply with every provision of the Enabling Act that a fair and judicial construction would authorize, but believing in its own power to regulate its own affairs, it will not undertake to interfere with those of a sister State or those belonging to the General Government.

Let no one be deceived in the distinction between the inability of this State to prohibit interstate commerce and the duty of the State to prohibit intra-state commerce in intoxicants. In the lack of power to prohibit the introduction and the fullness of power to prohibit the manufacture, barter, sale, gift or otherwise furnishing of liquors in contravention of its own ample laws on that subject.

The Supreme Court of the United States has determined for us the question of the right of Congress in the exercise of the police power of the United States

to prohibit the introduction and sale, etc., of intoxicants in Indian reservations within the States, and it is our opinion that as the laws are, the power to do so is exclusive, and being so, in our judgment the States are not called upon through their courts, or otherwise to question the jurisdiction of the United States Courts therein.

If there be Indian Reservations in Oklahoma, or it should be held that there is a class of Indians whose tribal titles to the lands have not been extinguished, and who are still wards of the Nation, then we think that with any and all such the Constitution of Oklahoma, in the proviso to section 503 Bunn's Constitution, fully recognizes where the authority over such Indians is lodged and disclaims connection therewith.

The various acts of Congress have about completed the segregation of the lands formerly owned by the Tribes, at least to such an extent that there is virtually an extinguishment of the tribal titles, and should there be isolated instances to which our statement does not apply, their dissolution is so imminent that it is more difficult to locate such instances than it would be to bring ourselves to grant the prayer of the petition, could we find it possible to reach such a conclusion,

The defendants in this bill are all common carriers, and each of the railway corporations admit the introduction as articles of interstate commerce, of liquors, wine, ale, beer, etc., and admit the interstate shipments of intoxicants only in such cases as the officers of Oklahoma authorize them to do.

In our judgment there is no law, nor can there be a

constitutional law made, that would authorize the State Courts to inflict pains and penalties upon common carriers for bringing from another State intoxicants into this State, but should our views be wrong, then, in such cases, the Attorney-General has a remedy in a criminal prosecution. Or if his contention be right that this is an Indian Country, or has within it sections of Indian Country, he may deem it proper to ask the endorsement of section 2139 Rev. Statutes of United States through the power of the United States Courts, as the State Courts are without jurisdiction to enforce a Federal Statute.

If there are intra-state shipments, as admitted, and the facts are not as admitted in the answer of defendants, then the State Courts are open for the enforcement of the Billups Bill, a State law; in like manner are our courts open for vigorous enforcement of the law against the manufacture, sale, barter, gift or otherwise furnishing of liquor except when done in the manner warranted by the State law.

The importance of the matters presented by the pleadings, together with the able and exhaustive oral arguments by the eminent counsel engaged, is deemed by us sufficient warranty for the duty which we have felt devolved upon us to go thoroughly into the questions submitted from every point of view, as we understand them, and this we have endeavored to do.

In concluding our views, we submit the thought that Oklahoma is now a sovereign State of the Union and entitled as such to preserve her own integrity and to enforce through her courts the laws of her own making,

and is not bound to reach out and strain the conditions upon which she was admitted into the Union in an effort to forestall the jurisdiction of the Federal Courts or usurp the prerogatives of the National Government.

Other laws and other jurisdictions have had their day in this country, and the places which knew them once will know them no more forever. The struggle of our people for Statehood has not yet become a dim memory. We have passed the bridge of the Enabling Act and it is behind us. Sovereignty and freedom are with us and before us, with all the rights, privileges, immunities and duties bestowed with the boon of self-government. If there were no other vicious results to arise from the application of the doctrine advocated in the petition at bar, it contains the seed of some bitter retrospection which the people of Oklahoma have no desire to keep alive. The obligations of the past have been discharged and it is no longer a question that the rights and duties of the State courts should be determined by laws made by the people of this State speaking through their legislature.

There should be no doubt cast upon the ability of the State to enforce strictly in her own forums the laws made for the government of her citizens. We are upon an equal footing with every other State. That right has been guaranteed to us by Congress and we should not be the first to look the Act in the teeth. Nothing should be demanded of Oklahoma, or her courts, that could not with judicial propriety be expected of the courts of every other State. Only such

matters as spring from the will of the State should the courts of the State be called upon to enforce.

In answer to the demands of the petition, we can safely assume that the sumptuary laws are in no danger, even though it is not within the power of the State to prohibit the introduction of intoxicants in the manner required; still the fact that it is within the power of the State—a power which we feel she is able and competent to wisely yield—to force within her own jurisdiction the penalties against a violation of the prohibition amendment to the Constitution overwhelmingly adopted by the people and the legislative Act known as the Billups Bill, thoroughly putting in force the provisions of the Constitutional amendment, is ample compensation for any regret, that may be felt that the power of the State is not broad enough to prohibit the transportation of such intoxicants from without the State to within her borders.

In accordance with the views herein expressed, we feel it to be our duty and so rule (1) that the demurrer of the State to the defendants' answer be overruled; (2) that the demurrer of defendants to the petition of plaintiff on the ground that it fails to state a cause of action authorizing the injunction prayed for be sustained; and the cause dismissed as to all the defendants. Let the decree be entered accordingly."

Since the filing of the original bill now under consideration, the State of Oklahoma, on the relation of Fred S. Caldwell, as Counsel to the Governor, filed a bill in the Superior Court of Oklahoma County, Oklahoma, against all of the defendants named in this bill



except the Pacific Express Company, and in addition to such defendants also included as defendants, the Midland Valley Railway Company, the Missouri, Oklahoma & Gulf Railway Company, the Arkansas Western Railway Company, the Poteau Valley Railroad Company and the United States Express Company. The relief sought in the bill filed in the Superior Court of Oklahoma County, Oklahoma, is similar to that sought in the bill now under consideration. The Court granted to the State an order of temporary injunction and an appeal from this injunction has been prosecuted to the Supreme Court of the State. Briefs have been filed and the case has been orally argued before that Court and has been submitted.

Owing to the importance of the case it was advanced upon the docket and an early decision is expected. In view of the previous pronouncements of that Court heretofore referred to in this brief, it can be reasonably anticipated that the Court will unequivocally declare that the State law does not intend to prohibit common carriers from conveying interstate shipments of liquor into any part of the State or to any bona fide consignee.

THE BILL IS DEFICIENT IN THAT IT SHOWS UPON ITS FACE THAT OTHER PARTIES THAN THOSE NAMED THEREIN AS DEFENDANTS ARE NECESSARY TO A FINAL DETERMINATION OF THE CASE, AND THAT THE RIGHTS OF VARIOUS PARTIES NAMED IN THE BILL BUT NOT MADE DEFENDANTS WILL BE DETERMINED IF THE

PRAYER OF THE COMPLAINANT BE GRANTED. IF THE NECESSARY PARTIES ARE MADE DEFENDANTS THIS COURT WILL LOSE ITS JURISDICTION AND THE BILL SHOULD THEREFORE BE DISMISSED.

The question of the sufficiency of the bill in the matters above indicated is raised by paragraph two of the demurrer, which is as follows:

“It appears by the said bill that there are divers other persons who are necessary parties to said bill, but who are not made parties thereto, and in particular it appears that by this bill it is sought to determine and settle the rights not alone of the parties made defendants to this bill, but of the various parties named in the body of the bill and who are not made parties thereto but whose rights are materially involved in the subject of the bill, and that complete justice cannot be done unless said other parties so named in said bill be made parties thereto, that they are necessary parties defendant, and, if joined, this Court would have no jurisdiction of the bill.”

On page 9 of the bill it is stated:

“And further, the State of Oklahoma complains and says that various persons in said State have made payment of the special tax required of liquor dealers under the laws of the United States, a list

of said persons together with their place of address and business, is as follows, to-wit."

From page 9 to 60 appear the names of various persons showing their residence to be in the State of Oklahoma and also the names of various concerns and associations which it is alleged are transacting business in the State of Oklahoma, but it is not made apparent by the bill whether such concerns and associations are partnerships or corporations.

A decree in this case in accordance with the prayer of the complainant would prohibit any of the carriers mentioned from delivering to any of the persons, partnerships, corporations or associations named in the bill intoxicating liquors in any quantity, for any purpose, or at any time. Their rights would be as effectually foreclosed as if they had been made parties to the suit and had opportunity to be heard by this court upon any questions at law which they might see fit to urge or any questions of fact which it will be necessary to determine before a decree can be entered. As a matter of fact, it may be that some of them do not hold Federal licenses, or do not intend to ship liquors into the state at all or at any rate in violation of the state laws. Even if there be any efficacy in that part of the Act which provides, "the payment of the special tax required of liquor dealers by the United States by any person within this State except local agents as hereinbefore provided shall constitute prima facie evidence of intention to violate the provisions of the Act," the state in the bill exhibited by it does not interpret the statute in accordance with its plain language

and intention but seeks to make the possession of a Federal license, not *prima facie*, but conclusive evidence of guilt. If any one of those persons holding Federal licenses has shipped liquor into the State or intends to do so in the future he has the right to have the question of his guilt or innocence as to any particular transaction determined in court in a proceeding in which he is a party, whereas the state would have them all adjudged criminals in a proceeding in which they have no voice whatever. Such cannot be the spirit and intention of the law nor a function of a court in equity.

Questions analogous to the one under discussion have been before this court in several cases, and it has been uniformly held that persons having an interest in the subject matter of the suit such as these persons have are indispensable parties thereto.

In the case of *Minnesota vs. Northern Securities Company*, 184 U. S. 199, 46 L. Ed. 499, it was sought by the state to enjoin the corporation of another state and its officers, representatives, agents, servants and stockholders from interfering in any way with the management or control, and from holding any stock in two corporations which were residents of the same state instituting the suit. The two resident corporations were not made parties to the bill. It was held that the resident corporations were necessary parties to the suit and inasmuch as they could not be joined without ousting the jurisdiction of the court, motion for leave to file the proposed bill was denied.

Before announcing the conclusion, Mr. Justice Shiras,

delivering the opinion of the court, stated the general rule relative to parties in an equity suit as follows:

“The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, are to be made parties to it, so that there may be a complete decree, which shall bind them all. By this means the court is enabled to make a complete decree between the parties to prevent future litigation, by taking away the necessity of a multiplicity of suits, and to make it perfectly certain that no injustice is done, either to the parties before it, or to others who are interested in the subject-matter, by a decree which might otherwise be granted upon a partial view only of the real merits. When all the parties are before the court, the whole case may be seen; but it may not, where all the conflicting interests are not brought out upon the pleadings by the original parties thereto.”

Concerning the rule as applied to the case under consideration the opinion of the court is as follows:

“But at once, as we have seen, the court is put upon inquiry whether the parties and persons to be affected by such an injunction are before it.

The narrative of the bill unquestionably discloses that the parties to be affected by a decision of the controversy are, directly, the State of Minnesota, the Great Northern Railway Company, the Northern Pacific Railway Company, corporations

of that state, and the Northern Securities Company, a corporation of the State of New Jersey, and, indirectly the stockholders and bondholders of those corporations and of the numerous railway companies whose lines are alleged to be owned, managed, or controlled by the Great Northern and Northern Pacific Railway Companies.

Can such a controversy be determined, with due regard to the interests of all concerned, by a suit solely between the State of Minnesota and the Northern Securities Company? It is, indeed, alleged that all of the stockholders of the Northern Securities Company are stockholders in the two railroad companies, and therefore it may be said that the latter stockholders are sufficiently represented in the litigation by the Northern Securities Company; but it is not alleged that the stockholders of the Northern Securities Company constitute or are composed of all the stockholders of the two railroad companies, and, in fact, the contrary is conceded in the allegations of the bill that a majority only of the stock of one, or perhaps both, of the two railroad companies is owned, or at least controlled and managed, by the Northern Securities Company. It is obvious, therefore, that the rights of the minority stockholders of the two railroad companies are not represented by the Northern Securities Company. They have a right to be represented in the controversy by the companies whose stock they hold, and their rights ought not be affected without a hearing even if it were conceded that a majority of the stock in such com-

panies, held by a few persons, had assisted in forming some sort of an illegal arrangement. \* \* \*

Upon investigation it might turn out that the allegations of the bill are well founded, and that the state is entitled to relief; or it might turn out that there is no intention or design on the part of the railroad companies to form any combination in disregard of the policy of the state, but that what is proposed consistent with that policy and advantageous to the communities affected. But, in making such investigation, a court of equity must insist that both sides of the controversy shall be adequately represented and fully heard.

When it appears to a court of equity that a case, otherwise presenting ground for its action, cannot be dealt with because of the absence of essential parties, it is usual for the court, while sustaining the objection, to grant leave to the complainant to amend by bringing in such parties. But when it likewise appears that necessary and indispensable parties are beyond the reach of the jurisdiction of the court, or that, when made parties, the jurisdiction of the court will thereby be defeated, for the court to grant leave to amend would be useless. Sec. 2 of Article 3 of the Constitution of the United States."

A case similar in principle is the *State of California vs. Southern Pacific Company*, 157 U. S. 229, 39 L. Ed. 683. This suit was also brought originally in the Supreme Court of the United States. The State of California was seeking to be decreed the owner of the beds

of the bay of San Francisco and of that part thereof which together with the San Antonio Creek constitutes the harbor of the City of Oakland in said state. The Southern Pacific Company, the defendant in the suit, had possession of the premises above described and was asserting title to, and control over, the same by virtue of certain mesne conveyances from the town of Oakland, which was subsequently incorporated as the City of Oakland. It was contended on the part of the Southern Pacific that a certain act of the legislature of California had granted to the town of Oakland the premises in question, and that the said town under the said act had authority to grant and convey, and did grant and convey the same to one Horace W. Carpentier, and that by mesne conveyance from Carpentier the defendant had become the owner in fee of certain portions, and also of certain other portions of the premises in question. If the City of Oakland was a necessary party defendant in the suit the court could not retain its jurisdiction because the suit would then be against a corporation of the State of California. Chief Justice Fuller, delivering the opinion of the court, said:

“Sitting as a court of equity we cannot, in the light of these well-settled principles, escape the consideration of the question whether other persons who have an immediate interest in resisting the demand of complainant are not indispensable parties or, at least, so far necessary that the cause should not go on in their absence. Can the court proceed to a decree as between the state and the



Southern Pacific Company, and do complete and final justice, without affecting other persons not before the court, or leaving the controversy in such a condition that its final termination might be wholly inconsistent with equity and good conscience.”

It is also said:

“When, heretofore, the City of Oakland applied to be made a co-complainant herein, the question of parties was necessarily suggested, although that applications was such, and presented at such a stage of the case, that the court was neither called on, nor could properly deal with the general subject. As original jurisdiction only subsisted in that the state was party, and the moving party (11th Amendment: *Hans vs. Louisiana*, 134 U. S. 1 (33:842) the motion of the city was denied. But we at the same time granted leave to the city to file briefs, accompanied by such maps and documents illustrative of its alleged title as it might be advised. The matter was thus left to the consideration of counsel as to whether indispensable or necessary parties had not been joined, while if the case was permitted to go to a hearing the court would then be able to dispose of it understandingly. We may add, that even if reference could be made to the 47th Rule in equity by way of analogy, that rule does not apply when indispensable parties are lacking, and that in respect of necessary parties the cause may or may not be

preceded in without them, as the court may determine in the exercise of sound discretion. We have no hesitation in holding that when an original cause is pending in this court to be disposed of here in the first instance and in the exercise of an exceptional jurisdiction, it does not comport with the gravity and finality which should characterize such an adjudication to proceed in the absence of parties whose rights would be in effect determined, even though they might not be technically bound in subsequent litigation in some other tribunal."

It is apparent from this case that there is no disposition on the part of this court to extend its original jurisdiction, but, on the contrary, that jurisdiction will not be assumed unless the facts are such as to clearly warrant it. The concluding paragraph of the opinion supports this proposition. It is said:

"It was held at an early day that Congress could neither enlarge nor restrict the original jurisdiction of this court (*Marbury vs. Madison*, 5 U. S. 1 Cranch, 137, 173, 174 (2:60, 72) and no attempt to do so is suggested here. The jurisdiction is limited and manifestly intended to be sparingly exercised, and should not be expanded by construction. What Congress may have power to do in relation to the jurisdiction of circuit courts of the United States is not the question, but whether, where the Constitution provides that this court shall have original jurisdiction in cases in which the State is plaintiff and citizens of another

State defendants, that jurisdiction can be held to embrace a suit between a State and citizens of another State and of the same State. We are of opinion that our original jurisdiction cannot be thus extended, and that the bill must be dismissed for want of parties who should be joined, but cannot be without ousting the jurisdiction."

Under the general rules of equity, regardless of the question of jurisdiction of the Supreme Court in an original suit there is a defect of parties defendant. In the case of *New Orleans Water Works Company vs. City of New Orleans*, 164 U. S. 471, 41 L. Ed. 519, the Water Works Company was seeking the cancellation of certain ordinances of the city granting to various persons the right to lay pipes through which to draw water for their own use from the Mississippi river, and also to restrain the city from granting to others like privileges. The city alone was made defendant in the suit and by its demurrer attacked the sufficiency of the bill for failure to make defendants therein those persons to whom the city had granted the right to lay pipes, Mr. Justice Harlan delivering the opinion of the Court said:

"It appears from the bill of complaint—the facts therein set forth being admitted by demurrer—that the City of New Orleans has by ordinances granted to a large number of corporations, associations, and individuals the privilege of laying pipes in its streets for the purpose of conveying water to their respective premises from the Mississippi. These ordinances, the plaintiff con-

tends, are in derogation of its rights and privileges as heretofore declared and adjudged by this court in the Rivers and St. Tammany Cases. None of the parties for whose benefit the ordinances above referred to were passed were brought before the court or given an opportunity to be heard. Nevertheless, the plaintiff seeks a decree not only declaring those ordinances to be null and void, but requiring the city, within a named time, to recall, expunge, repeal, and cancel each ordinance that does not relate to premises contiguous to the Mississippi river, and if the City does not, within such time, and in some public way, cancel and annul those ordinances, then that the court, in this suit, shall adjudge and decree them to be null and void as illegally interfering with the rights of the plaintiff.

We do not suppose that any precedent can be found that would justify a court of equity in giving such relief. A decree declaring the ordinances in question void would have no effect in law upon the rights of the beneficiaries named in the ordinances; for in the absence of the parties interested and without their having an opportunity to be heard, the court would be without jurisdiction to make an adjudication affecting them. Such a decree would appear upon the very face of the record, not to be due process of law, and could be treated everywhere as a nullity."

In the case of *Jose Ribon et al. vs. The Chicago, Rock Island & Pacific Railroad Company*, and the *Mis-*

Mississippi and Missouri Railroad Company, 83 U. S. 446, 21 L. Ed. 367, it was held that a bill to set aside the foreclosure of railroad mortgages filed by stockholders was defective because the trustees in the mortgages which were foreclosed should have been made parties. Mr. Justice Swayne delivering the opinion of the court says:

“The rule in equity as to parties defendant is, that all whose interests will be affected by the decree sought to be obtained must be before the court; and if any such persons cannot be reached by process (do not voluntarily appear, or from a jurisdictional objection going to the person in the courts of the United States, cannot be made parties) the bill must be dismissed. Where a decree can be made as to those present, without affecting the rights of those who are absent, the court will proceed. But if the interests of those present and of those absent are inseparable, the obstacle is insuperable. The Act of Congress of 1839 and the rule of this court upon the subject give no warrant for the idea that parties whose presence was before indispensable could thereafter be dispensed with.”

The above cases rest upon the doctrines announced in several earlier decisions of this court. The case of *Shields et al. vs. Barrow*, 17 How. 130, 15 L. Ed. 158, is cited with approval. The question of parties was fully discussed, and after the review of the authorities it is stated:

“The court here points out three classes of parties to a bill in equity. They are: 1. Formal parties, 2. Persons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it. Those persons are commonly termed necessary parties, but if their interests are separable from those of the parties before the court so that the court can proceed at a decree, and do complete and final justice, without affecting other persons not before the court, the latter are not indispensable parties. 3. Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience.

A bill to rescind a contract affords an example of this kind. For, if only a part of those interested in the contract are before the court, a decree of rescission must either destroy the rights of those who are absent, or leave the contract in full force as respects them; while it is set aside, and the contracting parties restored to their former condition as to the others. We do not say that no case can arise in which this may be done; but it must be a case in which the rights of those before the court are completely separable from the rights of

those absent, otherwise the latter are indispensable parties.”

The Court further said:

“The first section of that Statute enacts: ‘That when, in any suit, at law or in equity, commenced in any court of the United States, there shall be several defendants, any one or more of whom shall not be inhabitants of, or found within, the district where the suit is brought, or shall not voluntarily appear thereto, it shall be lawful for the court to entertain jurisdiction, and proceed to the trial and adjudication of such suit between the parties who may be properly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process, or not voluntarily appearing to answer; and the non-joinder of parties who are not so inhabitants, or found within the district, shall constitute no matter of abatement or other objection to said suit.

This Act relates solely to the non-joinder of persons who are not within the reach of the process of the court. It does not affect any case where persons, having an interest are not joined because their citizenship is such that their joinder would defeat the jurisdiction and so far as it touches suits in equity, we understand it to be no more than a legislative affirmance of the rule previously established by the cases of *Cameron vs. McRoberts*, 3 Wh., 591; *Osborn vs. Bank of U. S.*,

9 Wh. 738, and *Harding vs. Handy*, 11 Wh. 132. For this court had already there decided, that the non-joinder of a party, who could not be served with process, would not defeat the jurisdiction. The Act says it shall be lawful for the court to entertain jurisdiction; but, as is observed by this court, in *Mallow vs. Hinde*, 12 Wh., 198, when speaking of a case where indispensable parties were not before the court, 'we do not put this case upon the ground of jurisdiction, but upon a much broader ground, which must equally apply to all courts of equity, whatever may be their structure as to jurisdiction; we put it on the ground that no court can adjudicate directly upon a person's right, without the party being either actually or constructively before the court.'

So that, while this Act removed any difficulty as to jurisdiction, between competent parties, regularly served with process, it does not attempt to displace that principle of jurisprudence on which the court rested the case last mentioned. And the 47th rule is only a declaration, for the government of practitioners and courts, of the effect of this Act of Congress, and of the previous decisions of the court, on the subject of that rule, *Hagan vs. Walker*, 14 How., 36. It remains true, notwithstanding the Act of Congress and the 47th rule, that a circuit court can make no decree affecting the rights of an absent person, and can make no decree between the parties before it, which so far involves or depends upon the rights



of an absent person, that complete and final justice cannot be done between the parties to the suit without affecting those rights.”

In the case of *Mallow vs. Hinde*, 12 Wheat. 193, 6 L. Ed. 599, it is said:

“For the appellees it is insisted, that the proper parties are not before the court, so as to enable the court to decree upon the merits of the conflicting claims. And we are all of that opinion. It is plain that the appellants cannot set up the survey No. 537 against the appellees’ title, without first showing themselves entitled to that survey. They claim that survey, not by an assignment, or other instrument, investing them with a legal right to it, but by executory agreements, the validity and obligation of which the parties to them have a right to contest.

We cannot try their validity, and decide upon their efficacy, by affirming they confer upon the appellants an equitable right, without manifest prejudice to the rights of those not before the court. The complainants can derive no claim in equity to the survey, under, or through Langham’s executory contracts with the Beards, unless these contracts be such as ought to be decreed against them specifically by a court of equity. How can a court of equity decide that these contracts ought to be specifically decreed, without hearing the parties to them? Such a proceeding would be contrary to all the rules which govern

courts of equity, and against the principles of natural justice. Taylor, too, is the legal proprietor of the warrant, by virtue of which the entry and survey No. 537 was made, and in general the right of removal is incidental to the right of property, but it is alleged he has parted with that incidental right, although the general legal title of ownership remains in him; or that he has exercised this incidental right fraudulently and improperly, to the prejudice of the appellants.

Can any court justly strip him of this incidental right, or convict him of fraud unheard? \* \* \*

In this case, the complainants have no rights separable from, and independent of, the rights of persons not made parties. The rights of those not before the court lie at the very foundation of the claim of right by the plaintiffs, and a final decision cannot be made between the parties litigant without directly affecting and prejudicing the rights of others not made parties.

We do not put this case upon the ground of jurisdiction but upon a much broader ground, which must equally apply to all courts of equity, whatever may be their structure as to jurisdiction. We put it on the ground that no court can adjudicate directly upon a person's right, without the party being either actually or constructively before the court."

In *Consolidated Water Co. vs. City of San Diego et al.* (Circuit Court of Appeals, Ninth Circuit), 93 Fed. 849, it was held that in a suit by the mortgagee

of the property of the Water Company to restrain the enforcement of the city ordinance fixing rates of charge for all water furnished by it on the ground that such rates were so unreasonably low as to amount to a taking of the company's property without due process of law, the company is a necessary party complainant; its rights being directly affected by any decree which could be rendered therein. District Judge Hawley, delivering the opinion of the court, sustained the demurrer to the bill on account of defect of parties, and says:

“From this brief reference to the allegations of the bill, it will readily be seen that the San Diego Water Company has an interest in the subject-matter of the suit, and that any decree that might finally be rendered therein would affect its interest. It is certainly interested in obtaining the relief sought for by the complainant, and would doubtless be entitled, in its own behalf, if so disposed, to bring a suit in its own name, and litigate the same question, in a competent court. Its presence is necessary to a full and complete determination of the questions in controversy in this suit. To determine some of the questions raised by the bill as to the reasonableness of the rates fixed by the ordinance, it will involve an investigation of the management of the affairs of the company. \* \* \*

The general rule as to parties, as expressed in many of the authorities, is to the effect that all persons should be made parties to a suit in equity who are directly interested in obtaining or resisting the relief prayed for in the bill or granted in

the decree. And in a case like the present, where the trial of the suit would necessarily involve the management and conduct of the affairs, and an adjudication of the rights, of the San Diego Water Company, it is essentially necessary that it should be made a party to the suit, either as a plaintiff or a defendant."

In the United States Telephone Company vs. Central Union Telephone Co. et al. (Circuit Court, N. D. Ohio, W. D.), 171 Fed. 130, the doctrine of the cases above enumerated was upheld where suit was instituted by one long-distance telephone company having exclusive contracts with several local companies, binding the latter not to make or permit connections with other lines by any other company for a term of years and to enjoin such other companies doing a long-distance business from making connections with such local companies. It was held that the local companies were necessary parties to the bill. The reasons assigned why such local companies should be parties apply peculiarly to the case at bar. It is said:

"The effect, for instance, of a decree enjoining one of the defendants from continuing physical connections with a local independent company with which it now has telephone connections by virtue of some contract which they have seen fit to enter into, would be to determine as a finality against the local independent company, not a party, that it had no right to make a contract with the defendants or either of them, and to put an end to the operation of a contract which it has made,

or has sought to make, with the defendant companies, without giving the local company an opportunity to come in and assert that the contract which it made with the complainant is void or invalid or was without consideration, or from presenting any other defense or claim against the validity or existence of its so-called exclusive contract with the complainant, or from showing that its contract with the defendants is valid and valuable.”

In *Eldred et al. vs. American Palace Car Company et al.* (Circuit Court of Appeals, Third Circuit), 105 Fed. 457, it is said:

“This litigation must eventually end in the dismissal of the bill, by reason of the absence from the record of a necessary party. If such be the certain end of the bill, why should this injunction, without security, stand until that end is reached? It is quite clear that the right of action here sought to be enforced is the right of action of the Maine Corporation. The right of such corporation is the foundation on which the relief sought by its stockholders rests. The stockholder has no rights separable from those of the corporation. The right of the party before the court depends on the right of the party not before the court. Not only is the presence on the record of that corporation necessary to constitute the stockholders’ right, but the respondent has a right to its presence, so that it may be concluded by the decree. The authorities are clear that such corporation either

as a complainant or a respondent, is an indispensable party to the bill.”

In *Delaware, L. & W. R. Co. vs. Mayor, etc., of Jersey City* (Circuit Court, D, New Jersey), 168 Fed. 128, it is said:

“The defendant insists that the Hudson County Water Company is an indispensable party to the suit. This defense is not expressly presented by the answer; but, if the alleged defect be vital to the relief sought, the objection may be good. The contract shows that the pipe line, when laid, will be the property of the Water Company, and not the railroad company; that the Water Company will supply the line with water and operate it; and that it may possibly continue to operate the line, on the railroad company’s property, 25 years after the railroad company ceases to take water from it. It further appears, as already stated, that the work which the railroad company is attempting to do in the laying of those parts of the line which cross the public streets of Jersey City is for and at the expense of the Water Company. It follows that the Water Company has a vital interest in the result of this suit, and might, except for a fact to be hereafter mentioned have properly been joined as a party hereto.”

From a review of the above authorities it is apparent that this suit cannot proceed because indispensable parties are not before the court and cannot be brought in without ousting its jurisdiction. If a decree be ren-

dered against the defendants it would have no effect against any of those parties named in the bill as holding Federal licenses. With such a decree outstanding the defendants would have no protection against the holders of Federal licenses as they are not bound by it. Each and all of them could bring actions against any of the defendants for failure to receive for them or failure to deliver to them shipments of liquor. Instead of quieting litigation the ultimate effect would be that every defendant would have innumerable suits against it to which it could make no defense. Moreover, shippers of liquor outside of the state or other railroad companies which should receive shipments of liquor consigned to any of the parties named in the bill as holding Federal licenses could tender to these defendants such shipments, and if not received by them would have an action for damages. The State law does not prohibit the holder of a Federal license from receiving a shipment of liquor but merely attempt to simplify the proof necessary to secure a conviction for violation of the law by declaring a rule of evidence that such license shall constitute prima facie evidence of an intention to violate the law, yet the prayer of the bill goes beyond the language and intent of the law and would absolutely prohibit that class of persons from receiving any liquor whatever within the State. How far proof of an intention to violate the law would constitute proof of the violation thereof, and how far the construction of this law which the State is seeking to place upon it in this bill, would operate as class legislation as against those persons hold-

ing liquor licenses it is not deemed necessary to consider, as it is not conceived how the law could be so construed in view of the decisions heretofore referred to, and if so construed, it is not conceived how such a law would be within the power of the State to enact. These suggestions, while made in passing, are pertinent to the point that this litigation cannot settle the entire controversy because it operates directly upon a class not represented therein, whose interests are separate and distinct from those of these defendants, and whose defenses are doubtless equally as separate and distinct.

THIS COURT HAS NO JURISDICTION BECAUSE THE BILL SEEKS THE ENFORCEMENT OF THE PENAL LAWS OF THE STATE.

Upon this point the sufficiency of the bill is attacked by paragraphs 4 and 5 of the demurrer, which are as follows:

“4. Said bill does not involve any controversy of a civil nature as against this defendant.”

“5. By said bill and in this suit the said complainant, the State of Oklahoma, is seeking to enforce its penal laws.”

The two paragraphs above quoted present the same objection and can be conveniently discussed together.

The State Dispensary-Prohibition law, heretofore referred to, is quoted at length in the bill. It needs no argument to show the penal nature of this law.



It has been held in *Wisconsin vs. Pelican Insurance Company of New Orleans*, 127 U. S. 265, 32 L. Ed. 239, that the original jurisdiction of this court in controversies between a State and citizens of another State does not extend to a suit seeking the enforcement of a penal statute, and upon this point it would seem that this opinion is conclusive that the State cannot obtain in this court the relief sought by it. In the *Wisconsin* case, *supra*, the State had obtained judgment in its State courts against the Insurance Company by virtue of certain statutes of the State, making the company liable for penalties for failing to comply with its laws, and brought an action of debt by original suit in this court against the Insurance Company in an effort to force collection of its judgment. Mr. Justice Gray, delivering the opinion of the court, said:

“The statute of Wisconsin, under which the State recovered in one of her own courts the judgment now and here sued on, was in the strictest sense a penal statute, imposing a penalty upon any insurance company of another State, doing business in the State of Wisconsin without having deposited with the proper officer of the State a full statement of its property and business during the previous year. Wis. Rev. Stat. 1920. The cause of action was not any private injury, but solely the offense committed against the State by violating her law. The prosecution was in the name of the State and the whole penalty, when recovered, would accrue to the State, and be paid,

one-half into her treasury, and the other half to her insurance commissioner, who pays all expenses of prosecuting for and collecting such forfeitures. Wis. Stat. 1885, Chap. 395. The real nature of the case is not affected by the forms provided by the law of the State or the punishment of the offense. It is immaterial whether, by the law of Wisconsin, the prosecution must be by indictment or by action; or whether, under that law, a judgment there obtained for the penalty might be enforced by execution, by *scire facias*, or by a new suit. In whatever form the State pursues her right to punish the offense against her sovereignty, every step of the proceeding tends to one end, the compelling the offender to pay a pecuniary fine by way of punishment for the offense.

This court, therefore, cannot entertain original action to compel the defendant to pay to the State of Wisconsin a sum of money in satisfaction of the judgment for that fine.

The original jurisdiction of this court is conferred by the Constitution, without limit of the amount in controversy, and Congress has never imposed (if indeed it could impose) any such limit. If this court has original jurisdiction of the present case, it must follow that any action upon a judgment obtained by a State in her own courts against a citizen of another State for the recovery of any sum of money, however small, by way of a fine for any offense, however petty, against her laws, could be brought in the first in-

stance in the Supreme Court of the United States. That cannot have been the intention of the convention in framing, or of the people in adopting, the Federal Constitution.”

The doctrine of the Wisconsin case, *supra*, and other cases cited therein has not been changed or modified by any recent pronouncement of this court and under its authority the State of Oklahoma can clearly not obtain relief in this court.

In view of the previous authorities referred to in this brief it is respectfully contended that the demurrer should be sustained for the reason that this court is wholly without jurisdiction because certain indispensable parties are not brought into this court and if they should be brought into this court and joined in this cause as parties it would certainly oust the jurisdiction of the court over the cause, and regardless of this question of jurisdiction, because of the parties, the State of Oklahoma, is seeking to have this court enforce a penal statute of that State and is also not only seeking to regulate and interfere with interstate commerce but is further undertaking to absolutely prohibit the defendants from performing the interstate duties imposed upon them as common carriers.

Respectfully submitted,

JOSEPH M. BRYSON,  
CLIFFORD L. JACKSON,  
WILLIAM R. ALLEN.

JAMES HAGERMAN,

*true* ~~BRITTON & GRAY,~~

Of Counsel.





IN THE  
Supreme Court of the United States.  
OCTOBER TERM, 1910.

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No. 14  
Original.

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STATE OF OKLAHOMA,  
*Complainant,*  
*vs.*

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY ET AL.,  
*Respondents.*

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REPLY BRIEF FOR RESPONDENTS.

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Because it is alleged in the bill that certain named prospective consignees in the State of Oklahoma intend to dispose of shipments of liquor when received by them respectively in violation of the laws of that state, that, therefore, the carriers, in a sense, are conniving with such consignees to violate the state law governing the sale, etc., of liquors. But the carrier has no option in the matter. It must accept articles of interstate commerce tendered to it for transportation and carry and deliver the same as its

duty requires and it cannot be expected that at its peril it must ascertain or determine whether a particular consignee after receiving the shipment intends to dispose of it contrary to the laws of the state.

The shipper also who has made the sale in another state is entitled to have the goods carried and delivered in consummation of such sale. If the carrier refuses to receive, transport and deliver the shipment tendered to it it would be subjected to an action for damages by shipper or consignee, whoever might prove to be the owner of the goods, and the decree of this court in this suit prohibiting such transportation would not protect the carrier because neither such shipper or consignee have been made parties, or brought within the jurisdiction of this court.

Obviously, the question either as to the intent of a particular consignee in respect to the use of liquors shipped, or his right to have the same transported and delivered to him, cannot be determined in this case without giving him his day in court. But to make the alleged Oklahoma consignees parties to this bill would be to oust this court of its jurisdiction as they are citizens of Oklahoma. The various parties who are named in the bill as persons to whom liquor is being consigned from time to time, and who by virtue of alleged holding of a government license are claimed to be receiving such liquors for an illegal purpose, are indispensable parties. It would be inequitable for this court to make any order or decree upon the present bill which would

injuriously affect the rights of these parties without first giving them an opportunity to be heard by due process of law. The objection goes to the very merits of the bill. The lack of power in a court of equity to make an order or decree in the absence of indispensable parties has been so frequently passed upon by this court that it will be only necessary to refer to but a single authority.

See:

*California v. Southern Pacific Company*,  
157 U. S., 229.

Should a decree be entered against the carrier upon the present bill it would not be protected by the same against actions for damages brought by shippers or consignees who have not been made parties to the bill and are, therefore, not bound by any adjudication made thereunder. Thus the carrier would be ground between the upper and the nether millstone. We regret to be forced to this position because we have been anxious to secure an early determination by this court of the federal questions involved.

As to shipments of liquor into the eastern part of Oklahoma formerly occupied by Indian tribes, and in respect to which much reliance is placed in the state's brief upon certain old Indian treaties and the Intercourse Act of Congress of 1897, we would suggest that there is no allegation in the bill that such liquor is introduced for the purpose of being sold to the members of an Indian tribe, nor is it pretended that the places where such liquor is delivered by the carriers to consignees are upon Indian



allotments which are still subject to the jurisdiction of the United States. As is well known, lands or the country which formerly belonged to the Indian tribes in Oklahoma have been allotted in severalty among the members thereof and many of these allotments under the authority of the general government have been disposed of to white people. Congress has made the Indians who were formerly members of the Indian tribes citizens of the United States, and by virtue of the Fourteenth Amendment they are also now citizens of Oklahoma. We have at this day, therefore, presented the case in which there is no longer an Indian tribe with its constituent membership within the state, nor are there any tribal lands or Indian country belonging to any Indian nation, and the allotted lands over which the government still retains jurisdiction are segregated and scattered. It is, therefore, true as stated by the Attorney General in his brief in No. 13 Original, pages 65 and 66, filed in this court, speaking of Indian tribes in Oklahoma, that

*"Finally by various acts of Congress each of the tribes and nations ceased to have a tribal existence or a tribal domain."*

Such view evidently accords with that expressed by Judge Campbell in *United States v. Allen*, 171 Federal, 921, 922.

The jurisdiction of the federal government in respect to the introduction of liquor into any part of the territory occupied by a state must be found under an appropriate exercise, either of the treaty making power of the President with the consent of the Senate in dealing with Indian tribes, or the power

of Congress to regulate commerce with such Indian tribes, or it must be dependent on the fact that the federal government has title and control over certain lands within the state thus being able under the Constitution to govern locally in respect to the same.

But the old treaties with the various Indian tribes occupying what was formerly the Indian Territory have been superseded by congressional legislation authorizing the allotment of the lands of the respective tribes in severalty and the dismemberment of such tribes as national autonomies by the act of Congress making every member thereof a citizen of the United States. Treaties with Indian tribes are necessarily upon the same basis as those with foreign or alien nations. The Indian tribes were regarded as foreign or alien governments and their members as aliens, but if an individual of the tribe should leave the same and take up his abode among the white population and should he become naturalized he would stand upon the same footing as any other naturalized citizen.

See opinion of Chief Justice Taney in *Dred Scott v. Sandford*, 19 Howard, 403, 404.

A treaty between two nations is obviously made for the benefit and protection of the respective members thereof and to secure to such members rights which they might not otherwise be able to claim. But if after such treaty should be made all of the members of the one nation should become citizens or subjects of the other nation, obviously the treaty would cease to be operative and effective ex-

cept perhaps to protect vested rights. So when Congress naturalized all the Indians in the Indian Territory treaty provisions concerning the introduction of liquor into the tribe or nation necessarily ceased to be operative because so far as the Indians individually might be concerned the general government could exercise no more or greater power than it might exercise in respect to any other citizen of the United States. Its local police power in respect to such individuals would necessarily cease, just as its power in respect to the negro has ceased except where preserved by some peculiar constitutional provision.

With reference to the Indian Intercourse Act of 1897, it only applies, according to its express terms, to what is defined therein as "Indian country," including an Indian allotment over which the general government retains jurisdiction by virtue of the inability of the allottee to dispose of the particular allotment without the consent of such government. The jurisdiction of the federal government in such case is exercised by virtue of its jurisdiction over the particular land or territory.

In respect to lands to which the federal government has permitted the allottee to dispose of his title the power and jurisdiction of the federal government necessarily ceases as it does over any land, the title to which has been disposed of by that government.

The above views, we believe, accord with the later decisions of this court.

See particularly *In the Matter of Heff*, 197 U. S., 489.

These views have not been departed from in later cases.

In *United States v. Sutton*, 215 U. S., 291, defendant was indicted for introducing liquor into the Indian country "to wit, into and upon a certain Indian allotment No. 670, within the limits of the boundary of the Yakima Indian Reservation," etc., "said allotment being then and now one held in trust by the government for said allottee."

In *United States v. Celestine*, 215 U. S., 278, an Indian was charged with killing another Indian "within the limits of the Tulalip Indian Reservation" in Washington. The crime was committed within the Indian Reservation and upon land which had been allotted but which was still subject to the control of the general government. The court points out the distinction between "Reservations" and the "Indian country." The jurisdiction of the federal government in this case was dependent upon the fact that such government had control over the Reservation and might prescribe and punish offenses committed thereon.

In *Dick v. United States*, 208, U. S., 340, it appeared that the United States had reserved control over the land upon which the liquor was introduced. An act of Congress confirmed and retained the provisions of a treaty between the Nez Perce tribe of Indians in which the tribe ceded certain lands to the United States containing a provision that the ceded lands, as well as those retained and allotted to the Indians, should be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

In the earlier case of *United States v. Forty-three Gallons of Whiskey*, 93 U. S., 188, the libel under which the whiskey was seized showed that it was introduced with intent to sell, dispose of and distribute the same among the bands and tribes of Chipewewa Indians. The jurisdiction of the government was sustained in that case under the treaty power in dealing with an Indian tribe or nation and under the power of Congress to regulate commerce with the Indian tribes.

The foregoing suggestions are but a few of the matters which would be urged no doubt by shippers in actions for damages against the carriers should the latter refuse to receive and transport liquors from points in other states to points in Oklahoma.

As the bill is insufficient to invoke the jurisdiction of this court sitting as a court of equity, respondents demurrers should be sustained.

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# Supreme Court of the United States.

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OCTOBER TERM, 1910.

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No. 14, Original.

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THE STATE OF OKLAHOMA, *Plaintiff,*

*vs.*

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; GULF, COLORADO & SANTA FE RAILWAY COMPANY; ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; KANSAS CITY SOUTHERN RAILWAY COMPANY; FT. SMITH & WESTERN RAILROAD COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; AMERICAN EXPRESS COMPANY; PACIFIC EXPRESS COMPANY and WELLS FARGO & COMPANY, *Defendants.*

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**Brief in Support of the Demurrer of The Pacific Express Company.**

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## STATEMENT OF THE CASE.

The State of Oklahoma asks an injunction to prevent acts in Oklahoma which are alleged to be in violation of criminal laws in force in the state and enforceable by it.

Defendants are common carriers and the controversy is solely in regard to their right to deliver in Oklahoma interstate shipments of intoxicating liquors to:



1. All persons in that part of the state which was Indian Territory or was an Indian reservation prior to January 1, 1906, and,

2. Any person named in the bill as having paid the special tax required by the United States of retail liquor dealers.

Plaintiff appears to base its right to the relief asked on the following grounds.

(a) Plaintiff's obligations under the Enabling Act (the Act of June 16, 1906,) to enforce the provisions of certain treaties between the United States and several Indian tribes against the introduction of intoxicating liquors into part of the territory now included in the State of Oklahoma; and the provisions of Sec. 2139 of the Revised Statutes and the Act of Congress of January 30, 1897, relating to the introduction of liquors into the Indian Country.

The Enabling Act of June 16, 1906 is found in 34 Stat. 267, and the act of January 30, 1897 in 29 Stat. 506.

(b) The transportation by defendants of liquors in interstate commerce and delivery of the same to persons named in the bill constitutes a nuisance under the laws of Oklahoma.

(c) Plaintiff has by its own laws constituted itself the only person authorized to sell liquors within its boundaries, and the acts of defendants in delivering imported liquors to the persons named for the purpose of a re-sale of such imported liquors within the state interferes with plaintiff's monopoly to its pecuniary injury.

(d) The enforcement of the laws of Oklahoma against defendants' acts is so difficult and expensive, that plaintiff is entitled to relief in equity on the ground that there is no adequate remedy at law.

The bill alleges that prior to November 16, 1907, the United States made treaties with various Indian tribes whereby the lands formerly owned by said tribes should be allotted in severalty among the members of the tribe and that in the treaties the United States agreed to maintain strict laws in all of said territory . . . against the introduction, sale, barter or giving away of liquors and intoxicants (p. 4). By the Act of June 16, 1906, the United States provided for the admission into the Union of a state formed out of what was formerly Indian Territory and what was formerly Oklahoma Territory on an equality with the other states, "but expressly providing that the United States should be left in control of the Indians and the Indian tribes and their property, and expressly providing as one of the conditions precedent to the admission of said state into the Union, that the proposed state should in its constitution provide that the manufacture, sale, barter, giving away or otherwise furnishing, except as therein provided, of intoxicating liquors within those parts of the proposed state then known as Indian Territory and the Osage Reservation and within any other part of the proposed state which existed as Indian Reservation on the 1st. day of January, 1906, should be prohibited for 21 years" (p. 5).

From the foregoing recital of fact the pleader deduces this conclusion of law: "The power to regulate interstate commerce in intoxicating liquors was thereby surrendered to the State of Oklahoma as to said portion of said state," etc. (p. 6).

Descending to the particulars of the treaties the bill shows that:

The treaty of 1820 with the Choctaws "vested power in the agent of the United States government situate with said

nation to confiscate whisky which should be introduced into said nation."

The treaty with the Choctaw nation of 1830 "provided that the United States should be particularly obligated to assist in preventing the introduction of ardent spirits into the domain of the nation."

The treaty with the Cherokees of 1866 "provided that no liquor should be introduced into the nation except under the medical department of the United States."

Following these references to the treaties the bill alleges that the constitution of Oklahoma imposed upon the new state all obligations beneficial to the Indians imposed by said treaties on the United States; and "it was further provided by ordinance irrevocable that the terms and conditions of the act of June 16, 1906, were accepted, including the provisions against the furnishing of intoxicating liquors in what was formerly Indian Territory." It is alleged that defendants have violated the provisions against the introduction of liquors into what was formerly Indian Territory, and that such violation of law deeply injures and irreparably destroys the good citizenship and property of the state and its inhabitants; that plaintiff has no adequate remedy at law, and that defendant's acts "amount to the surrender and abandonment of their corporate rights to engage in interstate commerce" (p. 9). The prayer as to this part of the bill (p. 98) is that defendants be enjoined from introducing, conveying and furnishing any liquor in what was formerly Indian Territory or an Indian reservation and that in default of obedience to the injunction prayed for, defendant's rights to engage in interstate commerce with persons in the state be forfeited.

The second ground on which relief is asked is based on the allegation that the Enabling Act of June 16, 1906, provided that the constitution to be adopted by the new state should provide that "the payment of the special tax required of liquor dealers by the United States, of any person within those parts of the proposed state, then known as the Indian Territory and the Osage Reservation, and within any other parts of said proposed state which existed as Indian Reservation on the 1st day of January, 1906, should constitute prima facie evidence of the intention of such persons to violate the provisions of the act of June 16, 1906, in reference to the prohibition of the manufacture, sale, barter, giving away, or otherwise furnishing intoxicating liquors" (p. 61). The provisions of the Enabling Act were adopted by the constitutional convention, thus incorporating the foregoing provision into the laws of the state, and in addition thereto the constitutional convention submitted to a vote of the people of the state a constitutional provision of general application throughout the state, prohibiting the manufacture, barter, sale, giving away or otherwise furnishing intoxicating liquors anywhere in the state for a period of twenty-one years (p. 63). This provision was adopted, and thereafter, on March 24th, 1908, the legislature, pursuant to the constitutional provision, passed an act entitled:

"An Act to establish a state agency and local agencies for the sale of intoxicating liquors for certain purposes; and providing for referring the same to the people; prohibiting the manufacture, sale, barter, giving away or otherwise furnishing of intoxicating liquors, except as herein provided; providing for the appointment of an attorney and for the enforcement of the provisions of this act; making an appropriation and declaring an emergency" (p. 66).

This statute is copied into the bill (p. 66).

It establishes a state agency under the control of a state agent who is empowered to purchase and sell to local dispensaries, through local agents, all liquors which can be legally sold in the state. One agency only for the sale of intoxicating liquors is established in each incorporated town of two thousand and population or more and in each county having no such incorporated town of two thousand population (Sec. 5). Article 3 makes it unlawful for any person to manufacture, sell, barter, give away or otherwise furnish liquors except as provided in the act, or to ship or in any way carry any such liquors from one place within the state to another place therein unless the conveyance of a lawful purchase as therein authorized. Sec. 2 of Article 3 provides that "the payment of the special tax required of liquor dealers by the United States by any person within this state except local agents appointed as hereinbefore provided, shall constitute prima facie evidence of an intention to violate the provisions of this act." Liquors, except for purposes of legal sale may be adjudged forfeited and are to be utilized for the benefit of the state agency. Sec. 14 of Art. 3 provides that all places where liquors of any kind are manufactured, sold, bartered, given away or otherwise furnished in violation of any of the provisions of the act, are declared to be nuisances and shall be abated in the manner provided by law at the suit of any citizen of the state. Sec. 19a of Art. 3 provides that any agent of a common carrier who shall knowingly carry or deliver any liquors, the sale of which is prohibited by the act, to or for any person, to be sold, bartered, given away or otherwise furnished in violation of the act, shall be guilty of a misdemeanor.

It is alleged that Fred. S. Caldwell, counsel to the gover-

nor, appointed under said act, notified the several defendants of the provisions, of the Enabling Act, and of the constitution and of the act of March 24, 1908; and also of the names of some eleven hundred individuals named in the bill who had paid the special tax required of liquor dealers by the United States; that said Caldwell also notified defendant that the importation of liquors to any of said persons was a public nuisance, and were not importations in good faith, intended for the use of the consignee, but were for illegal sale in the state, and that under the laws of the state all of said persons intended to use all the liquor in their possession for sale in violation of the state laws (pp. 94-95). It is then alleged that defendants disregarded said notice and continued to deliver interstate shipments of liquor to the named consignees, who resold them in violation of law, to plaintiff's irreparable damage. An injunction is asked against the delivery of any liquors to said named persons.

The third ground of relief suggested in the bill is based on plaintiff's pecuniary interest in maintaining its monopoly in the sale of liquors conferred on plaintiff by the act of March 24, 1908, and exercised through the state agency thereby created. It is alleged that the delivery by defendants to the persons named and the re-sale by them of liquors imported from without the state, operates to the injury of plaintiff's exclusive right (p. 96).

All the defendants demur to the bill on the ground that it fails to state facts entitling plaintiff to the relief prayed.

### ARGUMENT.

**The bill does not present a justiciable controversy within the jurisdiction of the court.**

There is no direct allegation in the bill that defendants' acts violate any law of the state, but it is alleged that these acts constitute a nuisance, by reason of the fact that defendants are knowingly delivering in the state liquors to the persons named in the bill, thus affording them the means whereby the state law is violated; and plaintiff's brief argues that thereby defendants are co-principals in such violations; at page 49 it is said; "thus the carrier is necessarily and knowingly in this case a crime perpetrator, etc."

But the court has no jurisdiction to enforce the penal laws of the state, or its local law and policy, but only controversies of a civil nature to which a state is a party. In *Wisconsin vs. Pelican Insurance Co.*, 127 U. S. 265, the court, speaking by Mr. Justice Gray, referred to Art. 3, Sec. 2 of the Constitution which provides that the court shall have original jurisdiction in all cases "in which a state shall be a party," and said (127 U. S. 287):

"Yet notwithstanding the comprehensive words of the Constitution, the mere fact that a state is the plaintiff is not a conclusive test that the controversy is one in which this court is authorized to grant relief against another state or her citizens, etc."

Again it was said at p. 290:

"The rule that the courts of no country execute the penal laws of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the state for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue, or other municipal laws, and to all judgments for such penalties."

And at p. 293:

"From the first organization of the courts of the United States, nearly a century ago, it has always been assumed that the original jurisdiction of this court over controversies between a state and citizens of another state, or of a foreign country, does not extend to a suit by a state to recover penalties for a breach of her own municipal law."

In *Chisholm vs. Georgia*, 2 Dall. 431, 432, Mr. Justice Iredell, after citing the provisions of the Constitution, and of Sec. 13 of the judiciary act of 1789, c. 20, 1 Stat. 80, said:

"The Constitution is particular in expressing the parties who may be the objects of the jurisdiction in any of these cases, but, in respect to the subject matter upon which such jurisdiction is to be exercised, uses the word 'controversies' only. The act of Congress more particularly mentions civil controversies, a qualification of the general word in the Constitution which I do not doubt every reasonable man will think was well warranted, for it can not be presumed that the general word 'controversies' was intended to include any proceedings that relate to criminal cases, which, in all instances that respect the same government only, are uniformly considered of a local nature, and to be decided by its particular laws."

In *Cohens vs. Virginia*, 6 Wheat. 264, Chief Justice Marshall, after declaring that the Constitution had given jurisdiction to the courts of the Union in two classes of cases, in one of which, comprehending cases arising under the Constitution, laws, and treaties of the United States, the jurisdiction depended on the character of the cause; and in the other, comprehending controversies between two or more states, or between a state and citizens of another state, the jurisdiction depended entirely on the character of the parties, said:



"The original jurisdiction of the supreme court in cases where a state is a party, refers to those cases in which, according to the grant of power made in the preceding clause, jurisdiction might be exercised in consequence of the character of the party, and original suit might be instituted in any of the federal courts; not to those cases in which an original suit might not be instituted in a federal court. Of the last description is every case between a state and its citizens, and, perhaps, every case in which a state is enforcing its penal laws. In such cases, therefore, the supreme court can not take original jurisdiction" (pp. 398, 399).

In *Washington State vs. Northern Securities Company*, 185 U. S. 254, this objection to the jurisdiction of the court was presented in the following language of the Chief Justice:

"It is urged that the court would have no jurisdiction over the subject-matter because, as contended, the bill does not present the case of a controversy of a civil nature, which is justiciable under the Constitution and laws of the United States, in that the suit is purely a suit for the enforcement of the local law and policy of a sovereign and independent state, whose right to make laws and to enforce them exists only within itself and by means of its own agencies, and is limited to its own territory."

If this suit can be maintained, any state by alleging that it is unable, without great expense and trouble, to enforce its own criminal laws in its own courts, and that the violations of such laws constitute a nuisance, can enforce such laws in this court by injunction and the process of contempt.

**The Bill Should be Dismissed for Lack of Necessary Parties.**

The foreign shippers of the liquor and the consignees named in the bill are all, or some of them representing all, necessary parties in a suit to determine whether the shippers have a right to ship and the consignees a right to receive liquors shipped in interstate commerce. At common law and under the Interstate Commerce Act, to which defendants are subject, the shippers can demand from defendants fair and impartial transportation of their property. Sec. 10 of the Act of Congress of March 2, 1889, as amended, reads:

“That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm or corporation, alleging such violation by a common carrier, of any of the provisions of the act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms and conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ, etc.”

It was in a proceeding under this section that the District Court for the Western District of Arkansas, on July 13, 1910, issued a writ of mandamus ordering the United States Express Company to transport and deliver liquors in parts of Oklahoma which were formerly Indian Territory. *U. S. ex rel. Friedman et al. vs. U. S. Express Co.* 180 Fed. 1006.

Whether by the peculiar provisions of the law of Oklahoma the right so to ship in interstate commerce has been abrogated, and the "power to regulate interstate commerce thereby surrendered to the state" can not be determined, and the rights of the shippers foreclosed, in their absence. This is true also of the consignees. There is no allegation in the bill that any of the named consignees in fact intends to use any liquors which defendants may deliver to him for purposes of illegal sale; the allegation is that *prima facie* under Sec. 2, Art. 3, of the act of March 24, 1908, he so intends. How can his right to overcome the *prima facie* presumption, or his right to have adjudicated the question whether this section applies to goods purchased by him in another state, be passed on in a suit to which he is not a party? This would violate a fundamental rule of procedure which rests upon principles of universal justice, and applies to all courts, whether of law or equity. Such a decree, to use the language of Mr. Justice Harlan, in *New Orleans Water Works Company vs. New Orleans*, 164 U. S., at page 480, "would appear, upon the very face of the record, not to be due process of law, and could be treated everywhere as a nullity."

The general rule of equity, which is in accordance with fundamental principles of justice, requires that all persons whose rights will be directly affected by the decree must be made parties to the suit. The rule obtained early recognition by the court. In *Mallow vs. Hinde*, 12 Wheat. 194, 198, it was said:

"The rights of those not before the court lie at the very foundation of the claim of right by the plaintiffs, and a final decision can not be made between the parties litigant without directly affecting and prejudicing the rights of others not made parties. We do not put this

case upon the ground of jurisdiction, but upon a much broader ground, which must equally apply to all courts of equity, whatever may be their structure as to jurisdiction. We put it on the ground that no court can adjudicate directly upon a person's rights, without the party being either actually or constructively before the court."

*Shields vs. Barrow*, 17 How., 130, is the most often quoted case upon this subject and contains an exhaustive discussion of the reasons for the rule. It was said at page 141:

"It remains true, notwithstanding the Act of Congress and the 47th. rule, that a circuit court can make no decree affecting the rights of an absent person, and can make no decree between the parties before it, which so far involves or depends upon the rights of an absent person that complete and final justice cannot be done between the parties to the suit without affecting those rights. . . .

We have thought it proper to make these observations upon the effect of the act of congress and of the 47th. rule of this court, because they seem to have been misunderstood, and misapplied in this case; it being clear that the circuit court could make no decree, as between the parties originally before it, so as to do complete and final justice between them without affecting the rights of absent persons, and that the original bill ought to have been dismissed."

In *California vs. Southern Pacific Company*, 157 U. S., 229, a bill was filed by the State of California against the Southern Pacific Company to quiet the title of the state to certain lands under water on the Oakland waterfront of the City of Oakland, California. It was held that the City of Oakland and the Oakland Water Front Company were necessary parties to the case, and that, as they could not be brought before the court without ousting its jurisdiction the bill must be dismissed. At page 251 it was said:

"Sitting as a court of equity we cannot, in the light of these well-settled principles, escape the consideration of the question whether other persons who have an immediate interest in resisting the demand of complainant are not indispensable parties or, at least, so far necessary that the cause should not go on in their absence. Can the court proceed to a decree as between the state and the Southern Pacific Company, and do complete and final justice without affecting other persons not before the court, or leaving the controversy in such a condition that its final termination might be wholly inconsistent with equity and good conscience?"

In *Gregory vs. Stetson*, 133 U. S., 579, it appeared that two attorneys representing two separate parties delivered a promissory note to a third person as bailee and took his receipt therefor, in which he stated that he held it subject to their joint order. One of the separate parties filed a bill in equity against the bailee to compel him to deliver the proceeds of the note, without making parties to the bill the two attorneys and the other party. It was held that the court could make no decree in their absence. At page 586 Mr. Justice Lamar said:

"In the case before us we are unable to see how any final decree could be rendered affecting the parties to the contract sued on without making them all parties to the suit. It is an elementary principle that a court cannot adjudicate directly upon a person's right without having him either actually or constructively before it. The principle is fundamental. . . . The point was made in the court below, and it is also pressed here, that Mrs. Pike being a non-resident and beyond the jurisdiction of the court, it was impossible to join her as a party defendant to this suit, and that it was, therefore, unnecessary to attempt to do so. The court below ruled against the complainant on this point, and we see no error in that ruling. The general question

involved therein has been before this court a number of times, and it is now well settled that, notwithstanding the statute referred to and the 47th equity rule, a circuit court can make no decree in a suit in the absence of a party whose rights must necessarily be affected thereby."

New Orleans Water Works Company. vs. New Orleans, 164 U. S. 471, was a bill against the city of New Orleans as sole defendant to have certain grants which it had made to third persons to lay water pipes declared void, on the ground that they were in violation of an exclusive grant theretofore made to the plaintiff. The court sustained a demurrer to the bill on the ground that it was without jurisdiction to make an adjudication in the absence of the persons to whom the other grants had been made. Mr. Justice Harlan said, page 480:

"It appears from the bill of complaint—the facts therein set forth being admitted by the demurrer—that the city of New Orleans has by ordinances granted to a large number of corporations, associations and individuals, the privilege of laying pipes in its streets for the purpose of conveying water to their respective premises from the Mississippi. These ordinances, the plaintiff contends, are in derogation of its rights and privileges as heretofore declared and adjudged by this court in the *Rivers* and *St. Tammany* cases. None of the parties for whose benefit the ordinances above referred to were passed were brought before the court or given an opportunity to be heard. Nevertheless, the plaintiff seeks a decree not only declaring those ordinances to be null and void, but requiring the city, within a named time, to recall, expunge, repeal and cancel each ordinance that does not relate to premises contiguous to the Mississippi River, and if the city does not, within such time, and in some public way, cancel and annul those ordinances, then that the court, in this suit, shall adjudge and decree them to be null and void as illegally interfering with the rights of the plaintiff.

"We do not suppose that any precedent can be found that would justify a court of equity in giving such relief. A decree declaring the ordinances in question void would have no effect in law upon the rights of the beneficiaries named in the ordinances; for, in the absence of the parties interested and without their having an opportunity to be heard the court would be without jurisdiction to make an adjudication affecting them. Such a decree would appear, upon the very face of the record, not to be due process of law, and could be treated everywhere as a nullity."

In *Minnesota vs. Northern Securities Co.*, 184 U. S., 199, an application was made to the Supreme Court of the United States by the state of Minnesota for leave to file a bill against the Northern Securities Company, a New Jersey corporation, to enjoin the Securities Company from voting the stock which it held in the Great Northern and Northern Pacific Railway Company at any meeting of the stockholders of either of said companies. The court held that the railroads whose stock was held by the Securities Company were indispensable parties to the suit and that if made parties the jurisdiction of the court would be ousted. The application to file the bill was therefore denied, the court saying, at page 246:

"When it appears to a court of equity that a case otherwise presenting ground for its action, can not be dealt with because of the absence of essential parties, it is usual for the court, while sustaining the objection, to grant leave to the complainant to amend by bringing in such parties. But when it likewise appears that necessary and indispensable parties are beyond the reach of the jurisdiction of the court . . . for the court to grant leave to amend would be useless."

*Taylor vs. Southern Pacific Co.*, 122 Fed. 147, was an analogous case before Mr. Justice Lurton as circuit judge.

The foreign shippers whose interests are involved might properly be made parties to the suit by amendment, but as the inclusion of the consignees of the liquor who are citizens of Oklahoma would oust the jurisdiction of the court the bill should be dismissed; *California vs. Southern Pacific Company*, 157 U. S., 229; *Minnesota vs. Northern Securities Company*, 184 U. S., 199.

The case is not one involving absent persons "whose interests are such and so far separable from those of parties before the court, that the decree can be so shaped that the right of those actually before the court may be determined without affecting other persons not within the jurisdiction," to quote from the opinion in *Waterman vs. Canal-Louisiana Bank Co.* 215 U. S. 33, 48. On the contrary, any decree which could be framed under the bill would necessarily affect substantial rights of absent persons.

**The introduction of liquor into Oklahoma is not prohibited by any law of the United States.**

The bill suggests that by reason of certain provisions in the treaties with the Indians, the United States assumed an obligation still in force to prevent the introduction of liquor into that part of the state which was formerly Indian Territory, Osage reservation or other Indian reservation. It is alleged in the bill that on the admission of Oklahoma to statehood, it was expressly provided that the United States should be left in control of the Indian tribes and their property, but the pleader does not advance the claim that this provision continues in force any treaty provision or any statute of the United States, which makes it an offense punishable by the



United States to introduce liquors into Oklahoma in interstate commerce. On the contrary, the contention is, that while the prohibition remains, the jurisdiction to punish and the right to regulate such commerce was surrendered to the state by the terms of the Enabling Act. In other words the offense is defined by federal law, but jurisdiction is conferred on the state. Under the present head we propose to show that there is no law of the United States in force which deals with the subject at all, except general statutes applicable to all commerce between the states, and that such statutes protect the transportation of liquor by defendants.

In referring to the Indian treaties the bill alleges (p. 5):

"The United States agreed to maintain strict laws in all of said Territory, and particularly in the land agreed to be allotted, against the introduction, sale, barter or giving away of liquors and intoxicants, etc".

There is in fact no such broad provision in the treaties which the bill specially refers to. The pertinent clause in the treaty of 1820 with the Choctaws, Sec. 12 of 7 Stat. 210:

"In order to promote industry and sobriety among all classes of the red people in this Nation, but particularly the poor, it is further provided by the parties, that the agent appointed to reside here shall be and he is hereby vested with full power to confiscate all the whisky which may be introduced into said Nation, except that used at public stands or brought in by the permit of the agent, or the principal chiefs of the three Districts."

The treaty with the Choctaw nation of 1830 (7 Stat. 333, Art. 10), provided that "the United States shall be particularly obliged to assist to prevent ardent spirits from being introduced into the nation."

The bill alleges that the treaty with the Cherokees of 1866, "provided that no liquor should be introduced into the Nation except under the medical department of the United States" (p. 7). The foregoing language does not correctly state the substance of the treaty. The only article which deals with the subject is:

"Art. 27. The United States shall have the right to establish one or more military posts or stations in the Cherokee nation as may be deemed necessary for the proper protection of the citizens of the United States lawfully residing therein, and the Cherokees and other citizens of the Indian country. But no sutler or other person connected therewith, either in or out of the military organization, shall be permitted to introduce any spiritous, vinous, or malt liquors into the Cherokee nation, except the medical department proper, and by them only strictly for medical purposes, etc." (14 Stat. 799, 806).

Some of the treaties, notably the treaty of 1820 with the Choctaws, which merely vests authority in the government agent to confiscate whisky which may be introduced into the nation, and the treaty of 1866 with the Cherokees which forbids the importation by persons connected with the military establishment, can not be construed as imposing on the United States the broad obligation "to maintain strict laws against the introduction of liquors into the territory." Nor does the treaty of 1830 with the Choctaws wherein it was provided that the United States was to be "particularly obligated to assist in preventing the introduction of ardent spirits into the domain of the nation," impose any definite and clear obligation on the United States to deal with the subject in any particular way. Several subsequent agreements between the United States and tribes and nations formerly owning and occupying

lands now within Oklahoma, which are not specifically referred to in the bill, but which are mentioned in the brief are:

The Seminole Agreement of December 16, 1897 (30 Stat. 567), which was for the purpose of carrying into effect the extinguishment of the tribal title, the cession of a part of the tribal lands to the United States, and the allotment of the remainder in severalty, pursuant to the negotiations theretofore entered into between the five civilized tribes and the commission created by the act of March 3, 1893 (27 Stat. 645), contained a provision that:

"The United States agrees to maintain strict laws in the Seminole country against the introduction, sale, barter or giving away of intoxicants of any kind or quality."

The Creek Agreement of March 1, 1901 (31 Stat. 861), was for a similar purpose and provided that:

"The United States agrees to maintain strict laws in such nation against the introduction, sale, barter or giving away of liquors or intoxicants of any kind whatsoever."

Both these agreements contemplated the extinguishment of the tribal domain, and neither of them had the dignity of treaties so as to constitute them part of the supreme law of the land under Article Six of the Constitution. They do not purport to be treaties and were entered into subsequent to the act of March 3, 1871 (R. S. 2079), which provided that:

"No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power, with whom the United States may contract by treaty, etc."

Prior to the enactment of the Enabling Act there was a general statute in force throughout the United States, enacted subsequent to the treaties above mentioned, which covered the whole subject of giving and selling liquor to Indians and introducing liquor into Indian country; and which may be considered as the assumption by Congress, and the embodiment in the law, of whatever obligations concerning liquors to the Indians were imposed on the United States by the treaty provisions.

The Act of July 23, 1892, 27 Stat. 260 (R. S., Sec. 2139), amending prior acts read in part as follows:

"No ardent spirits, ale, beer, wine or intoxicating liquor or liquors of whatever kind shall be introduced, under any pretense, into the Indian country. Every person who sells, exchanges, gives, barter or disposes of any ardent spirits, ale, beer, wine or intoxicating liquors of any kind to any Indian under charge of any Indian superintendent or agent, or introduces or attempts to introduce any ardent spirits, ale, wine, beer or intoxicating liquor of any kind into the Indian country shall be punished by imprisonment for not more than two years, and by fine of not more than three hundred dollars for each offense."

The Act of Jan. 30, 1897, 29 Stat. 506, reads:

"That any person who shall sell, give away, dispose of, exchange, or barter any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian a ward of the Government under charge of any Indian superintendent or agent,

or any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, and any person who shall introduce or attempt to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, which term shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be punished, etc."

The treaties were with the tribes and in so far as the subject of the introduction of liquor was dealt with it concerned the tribe only as a tribal organization with a tribal domain. The Indians in Oklahoma have no longer a national existence or a tribal domain; *United States vs. Allen*, 171 Federal Rep. 907; *United States vs. United States Express Co.*, 180 Fed. 1006. In *State of Oklahoma vs. Atchison, Topeka and Santa Fe Ry. Co.*, No. 13 Original, this term, it is stated in the brief for the state that "each of the tribes (in Oklahoma) ceased to have a tribal existence or a tribal domain (p. 65)." The obligations imposed on the United States by the treaties ran only to the tribes and terminated with the termination of the tribal existence, *Conley vs. Ballinger*, 216 U. S. 84.

It is not necessary to invoke the familiar principle that an Act of Congress repeals the provisions of a prior treaty on the same subject, in order to reach the conclusion that the Act of January 30, 1897, was the sole law in force on this subject when the Enabling Act was passed and when Oklahoma was admitted into the Union. The act of January 30, 1897, 29 Stat. 506, made clear and definite the meaning of the treaty provisions, provided jurisdiction, procedure and penalties, and defined the only offense known to the federal law in connection

with the act of furnishing liquors to Indians, introducing it into Indian country, etc.

**Jurisdiction over the liquor traffic in what was formerly Indian country was transferred to the State on her admission into the Union.**

United States vs. United States Express Company, 180 Fed. Rep. 1006, was a petition for a writ of mandamus based on section 10 of the Act of Congress of March 2, 1889 (The Interstate Commerce Act), on relation of a liquor dealer located at Fort Smith, Arkansas, to compel the express company to transport and deliver intoxicating liquor to plaintiff's customers residing in that part of Oklahoma, which was formerly Indian Territory. The district court of the United States for the western district of Arkansas issued the writ, holding, as shown by the 4th syllabus in the report, that:

"Since, by the Enabling Act by which Oklahoma was admitted into the Union (Act Cong., June 16, 1906, c. 3335, 34 Stat. 267 [U. S. Comp. St. Supp. 1909, p. 155]), the state was left with jurisdiction of the introduction of intoxicating liquors from Oklahoma into that part of the state known as Indian Territory, and was authorized to control the sale of liquor through its own courts, the non-intercourse act (Act Cong., Jan. 30, 1897, c. 109, 29 Stat. 506) forbidding the introduction of intoxicating liquors into Indian Territory, was no longer in force in that part of Oklahoma, formerly known as Indian Territory, after its admission as a state so as to prevent the introduction therein of liquor from Arkansas in interstate commerce" (4th syllabus).

The conclusion of the district judge was reached after careful consideration of the provisions of the Enabling Act, the condition of the Indian inhabitants of Oklahoma, and the decisions of this court, including the recent case of Pickett vs.

United States, 216 U. S. 456. We think that it is unnecessary to add anything in support of the conclusions reached in that case.

**Congress did not and could not delegate to Oklahoma the power to enforce the Act of January 30, 1897.**

Plaintiff makes no contention contrary to the decision in United States vs. United States Express Company. It is not alleged or agreed that the non-intercourse act of January 30, 1897, remained in force as a law of the United States, enforceable by the United States in the proper courts, after the enactment of the Enabling Act. The contention is that the act was in force prior to the admission of Oklahoma to statehood and that "all such laws, which, before the advent of statehood, were in force in the Territory of Oklahoma by virtue of the supervision of Congress over a territory, became in and after that day, laws of the state of Oklahoma and in force therein" (plaintiff's brief, p. 33).

Plaintiff's contention is that on admission into the Union it was plaintiff's right and duty, conferred and imposed by the terms of the Enabling Act to enforce the non-intercourse act, and that the statute of March 24, 1908 (The Prohibitory Law of Oklahoma), is the instrument whereby the non-intercourse act is to be enforced. Plaintiff contends that the Enabling Act conferred on plaintiff the right to prevent the interstate transportation of liquors into Oklahoma, as a violation, not of federal but of state law; and that by reason of the difficulty and expense attending the prevention of such importations in the state courts under the Prohibitory Law, plaintiff is entitled to an injunction from this court.

It is firmly established that Congress could not delegate to the state of Oklahoma the power to enforce the provisions of the non-intercourse act. As said by Mr. Justice Story in *Martin vs. Hunter's Lessee*, 1 Wheat. 305, 337. "No part of the criminal jurisdiction of the United States can, consistently with the constitution, be delegated to state tribunals." This case was referred to by the court in *Pickett vs. U. S.* 216, U. S. 265, which held that the jurisdiction of crimes against the United States was transferred by the Oklahoma Enabling Act to the United States courts.

If Congress did by the terms of the Enabling Act undertake to empower Oklahoma to enforce the provisions of the non-intercourse act as to the shipments involved in this case, it would amount to a delegation by Congress to the state of the power to regulate interstate commerce. Plaintiff in fact contends and the bill alleges that Congress did surrender to the state the power to regulate commerce in intoxicating liquors as to those parts of the state which were formerly Indian Territory or an Indian reservation (p. 5).

Plaintiff says in the brief (p. 13):

"The Enabling Act is express consent of Congress to Oklahoma to forbid and prevent importation into the Indian Territory altogether, and in Oklahoma Territory when shipments in bad faith or to persons who had paid special tax."

**Congress did not attempt to delegate to Oklahoma the power to regulate interstate commerce.**

The intention of Congress to delegate a power of such importance to a state will not be implied or lightly assumed. It should be made to appear from clear and unmistakable



language. No provision of the Enabling Act appears on its face to refer to interstate commerce at all. The second clause of Section 3, reads in part as follows (June 16, 1906, 34 Stat. 267):

“Second. That the manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within those parts of said state now known as the Indian Territory and the Osage Indian Reservation and within any other parts of said state which existed as Indian reservations on the first day of January, nineteen hundred and six, is prohibited for a period of twenty one years from the date of the admission of said state into the Union, and thereafter until the people of said state shall otherwise provide by amendment of said constitution and proper state legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away or otherwise furnish any intoxicating liquor of any kind, including beer, ale, and wine contrary to the provisions of this section, or who shall, within the above described portions of said state, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from other parts of said state into the portions hereinbefore described, shall be punished, on conviction thereof, by fine not less than fifty dollars and by imprisonment not less than thirty days for each offense; provided, that the legislature may provide by law for one agency under the supervision of said state in each incorporated town of not less than two thousand population in the portions of said state hereinbefore described; and if there be no incorporated town of two thousand population in any county in said portions of said state, such county shall be entitled to have one such agency, for the sale of such liquors for medicinal purposes; and for the sale, for industrial purposes, of alcohol which shall have been denaturalized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific pur-

poses to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum not less than one thousand dollars, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the parts of said state hereinabove defined shall constitute *prima facie* evidence of his intention to violate the provisions of this section. . . . Upon the admission of said state into the Union these provisions shall be immediately enforceable in the courts of said state."

It is apparently from the use of the words, "otherwise furnishing" (plaintiff's brief, p. 69) that the court is asked to hold that Congress delegated to Oklahoma the power to regulate commerce between the states in liquors. "Furnishing" in this clause is clearly, "*noscitur a sociis*:" it is cognate with "manufacture, sale, barter, giving away" in the territory. It does not contemplate a delivery by a common carrier in pursuance of a lawful sale consummated elsewhere. *Southern Express Company vs. State*, 107 Georgia, 670, 33 Southeastern Rep. 637; *State vs. Lynch*, 81 Ohio St. 336.

The express provision which enjoins upon the new state the duty of providing in its constitution that it shall be an offense for any person to ship or convey liquors from other parts of the state into what was formerly Indian Territory and Indian reservation, excludes the inference that Congress intended to prevent the importation of liquors from other states into such territory.

**The Bill does not show that consignees intend to make illegal use of liquor whose transportation from other states is sought to be enjoined.**

Section 2 of Article III of the Act of March, 24, 1908, (Bill of Complaint p. 79) provides:

“The payment of the special tax required of liquor dealers by the United States by any person within this State, except local agents appointed as hereinbefore provided shall constitute prima facie evidence of an intention to violate the provisions of this Act.”

This provision was required by the Enabling Act to be incorporated into the State Constitution in so far as former Indian country was concerned, and by force of the above section is was made applicable to the whole state.

The bill gives the names of some 1100 persons with their addresses in all parts of Oklahoma and alleges that they have made payment of the special tax required of liquor dealers under the laws of the United States (p. 9); and that the state attorney charged with the enforcement of the prohibitory law so informed defendants prior to the bringing of the suit (p. 94). It is not alleged when these people paid the tax or whether they are still special tax-payers, or how long prior to filing the bill defendants were given this information. Further it is not alleged that the persons named or any of them actually intend to or will make use of the liquors which defendants may hereafter deliver to them, for the purpose of violating the state law. The only allegation is that by force of the state statute they are taken prima facie to so intend, and that Fred S. Caldwell, the state attorney, informed defendants, “that *under the state law* each and all of said persons intended to use all of said liquor in their possession to sell the same in said state in violation of its laws” (p. 95).

Commerce among the states is a practical conception, as said by Mr. Justice Holmes in *Rearick vs. Pennsylvania*, 203, U. S. 507, 512, and the court has frequently found occasion to prevent the broad power of Congress over commerce from being whittled away by ingeniously devised state laws, which impose impractical burdens and conditions on persons engaged in it, including common carriers. A consignee in Oklahoma of imported liquors may intend to use them legally, even though he has paid the special United States tax: he may be able to rebut the *prima facie* presumption of the state statute. If he does intend the legal use of the liquors, admittedly he has a right to import them, and the shipper outside the state can compel the carrier to accept, transport and deliver them. It is impossible for the carrier to determine that a consignee in Oklahoma who has paid a tax intends an illegal use of particular liquors offered for shipment.

**The business of transporting merchandise from one state to another, and contracts by carriers for such transportation are interstate commerce, in and of themselves.**

In *Hanley vs. Kansas City Southern Railway*, 187 U. S. 617, 619, Mr. Justice Holmes, after referring to *Gloucester Ferry Co. vs. Pennsylvania*, 114 U. S. 196, 203, and *Wabash, St. Louis & Pacific Railway Co. vs. Illinois*, 118 U. S. 557, said:

“Transportation for others, as an independent business, is commerce, irrespective of the purpose to sell or retain the goods which the owner may entertain with regard to them after they shall have been delivered.”

The foregoing language is quoted with approval in *Lottery Case*, 188 U. S. 321, 352, where it was held that the carriage

of lottery tickets by an express company from one state to another is interstate commerce. In delivering the opinion of the court, Mr. Justice Harlan said:

“Undoubtedly, the carrying from one state to another by independent carriers of things or commodities that are ordinary subjects of traffic, and which have in themselves a recognized value in money, constitutes interstate commerce” (188 U. S. 345).

The rule goes back to *Gibbons vs. Ogden*, 9 Wheat. 1, where Chief Justice Marshall said:

“The words are: ‘Congress shall have power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.’ The subject to be regulated is commerce; and our Constitution being, as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations. Commerce, undoubtedly, is traffic, but it is something more, it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of the individuals, in the actual employment of buying and selling, or of barter.”

In *United States vs. Freight Association*, 166 U. S. 290, Mr. Justice Peckham, delivering the opinion of the court, said (p. 312).

"It can not be denied that those who are engaged in the transportation of persons or property from one state to another are engaged in interstate commerce. . . . Railroad companies are instruments of commerce, and their business is commerce itself. State Freight Case, 15 Wall. 232, 275; Telegraph Co. vs. Texas, 105 U. S. 460, 464."

Whisky, as the court has decided, is an article of commerce which carriers engaged in interstate traffic are bound to carry. In *Leisy vs. Hardin*, 135 U. S. 100, 110, Chief Justice Fuller said:

"Ardent spirits, distilled liquors, ale and beer are subjects of exchange, barter and traffic, like any other commodity in which a right of traffic exists, and are so recognized by the usages of the commercial world, the laws of congress and the decisions of the courts."

**The prima facie presumption provision of the prohibitory statute of Oklahoma, if applied to interstate shipments, imposes unconstitutional burdens on interstate commerce.**

The legislature of Oklahoma can not regulate the business of interstate carriers by forbidding the transportation of liquors from another state to Oklahoma, or by requiring them to ascertain, at their peril, whether goods offered to them in another state are intended for illegal re-sale in Oklahoma after delivery. A carrier is under no such obligation at common law, and has no means of compelling the consignee to disclose his intentions in regard to the goods.

In *Western Union Telegraph Company vs. Call Publishing Company*, 181 U. S. 92, 102, Mr. Justice Brewer said:

"The principles of the common law are operative

upon all interstate commerce transactions except so far as they are modified by Congressional enactment."

In *Hall vs. DeCuir*, 95 U. S. 485, 490, Chief Justice Waite said:

"By refraining from action, Congress, in effect, adopts as its own regulations those which the common law or the civil law, where that prevails, has provided for the government of such business, and those which the states, in the regulation of their domestic concerns, have established affecting commerce, but not regulating it within the meaning of the Constitution. . . . As was said by Mr. Justice Field, speaking for the court in *Welton vs. The State of Missouri*, 91 U. S. 282, 'in-action (by Congress) . . . is equivalent to a declaration that interstate commerce shall remain free and untrammelled.'"

In *Brenner vs. Titusville*, 153 U. S. 289, 302, Mr. Justice Brewer said:

"The silence of congress in respect of any matter of interstate commerce is equivalent to a declaration on its part that it should be absolutely free."

In *Bowman vs. Chicago & Northwestern Railway Company*, 125 U. S. 465 (1888) the court held that a statute of Iowa, forbidding common carriers to bring intoxicating liquors into the state from any other state or territory without first being furnished with a certificate prescribed by the law of Iowa, was invalid, because essentially a regulation of commerce among the states. In delivering the opinion, Mr. Justice Matthews said:

"It can not be doubted that the law of Iowa, now under examination, regarded as a rule for the transportation of merchandise, operates as a regulation of commerce among the states" (125 U. S. 479).

He quoted from the opinion in *County of Mobile vs. Kimball*, 102 U. S. 691, in which Mr. Justice Field declared that "there can be only one system of rules applicable alike to the whole country" for the regulation of commerce as defined by this court, and "that the authority which can act for the whole country can alone adopt such a system" and that "action upon it by separate states is not therefore permissible."

The doctrine established in *Bowman's* case is thus stated by Mr. Justice White in *Rhodes vs. Iowa*, 170 U. S. 412, 415:

"After great consideration it was held that the law of the state of Iowa, in so far as it affected interstate commerce, was repugnant to the interstate commerce clause of the constitution, and was void. It was decided that the transportation of merchandise from one state into and across another was interstate commerce, and was protected from the operation of state laws from the moment of shipment whilst in transit and up to the ending of the journey by the delivery of the goods to the consignee at the place to which they were consigned."

At p. 419, Mr. Justice White said:

"The fundamental right which the decision in the *Bowman* case held to be protected from the operation of state laws by the Constitution of the United States was the continuity of shipment of goods coming from one state into another from the point of transmission to the point of consignment, and the accomplishment there of the delivery covered by the contract."

In *Rhodes vs. Iowa*, 170 U. S. 412, the court held that the Wilson Act "was not intended to and did not cause the power of the state to attach to an interstate commerce shipment whilst the merchandise was in transit under such shipment, and until the arrival at the point of destination and delivery there to the consignee" (170 U. S. 426).



In *Vance vs. W. A. Vandercook Company* (No. 1), 170 U. S. 438, 444, Mr. Justice White said:

"Equally well established is the proposition that the right to send liquors from one state into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and, hence, that a state law which denies such a right, or substantially interferes with or hampers the same, is in conflict with the Constitution of the United States."

In *Heyman vs. Southern Railway Company*, 203 U. S. 270, the case of *Rhodes vs. Iowa* was referred to as necessarily involving a decision of the meaning of the word "arrival" in the Wilson Act, and the rule was reiterated that interstate shipments of liquor were protected from state interference until delivery to the consignee. *Vance vs. Vandercook* was referred to as announcing the same rule.

In *American Express Company vs. Iowa*, 196 U. S. 133, and *Adams Express Company vs. Iowa*, 196 U. S. 147, the court held that a statute of Iowa making it an offense for carriers to deliver C. O. D. shipments of intoxicating liquor, was repugnant to the Constitution of the United States, as applied to shipments from another state.

In *Central of Georgia Railway Company vs. Murphey*, 196 U. S. 194, the court held:

"The imposition, by a state statute, upon the initial or any connecting carrier, of the duty of tracing the freight and informing the shipper, in writing, when, where, how and by which carrier the freight was lost, damaged or destroyed, and of giving the names of the parties and their official positions, if any, by whom the truth of the facts set out in the information can be es-

tablished, is, when applied to interstate commerce, a violation of the commerce clause of the Federal Constitution; and sections 2317, 2318 of the Code of Georgia of 1895, imposing such a duty on common carriers is void as to shipments made from points in Georgia to other states."

Mr. Justice Peckham said, at page 204:

"The effect of such a statute is direct and immediate upon interstate commerce. It directly affects the liability of the carrier of freight destined to points outside the state, with regard to the transportation of articles of commerce; it prevents a valid contract of exemption from taking effect, except upon a very onerous condition, and it is not of that class of state legislation which has been held to be rather an aid to than a burden upon such commerce. The statute in question prevents the carrier from availing itself of a valid contract, unless such carrier comply with the provisions of the statute by obtaining information which it has no means of compelling another carrier to give, and yet if the information is not obtained the carrier is to be held liable for the negligence of another carrier over whose conduct it has no control. This is not a reasonable regulation in aid of interstate commerce, but a direct and immediate burden upon it."

In *Houston and Texas Central Railroad Company vs. Mayes*, 201 U. S. 321, it was held that:

"An absolute requirement that a railroad engaged in interstate commerce shall furnish a certain number of cars on a specified day, to transport merchandise to another state, regardless of every other consideration except strikes and other public calamities, transcends the police power of the states and amounts to a burden upon interstate commerce; and articles 4497-5000, Rev. Stat. Texas, being such a requirement, are, when applied to interstate commerce shipments, void as a violation of the commerce clause of the Federal Constitution.

Such a regulation can not be sustained as to inter-

state commerce shipments as an exercise of the police power of the state."

In *McNeill vs. Southern Railway Co.* 202 U. S. 543, the court held that "the interstate transportation of cars from another state which have not been delivered to the consignee, but remain on the track of the railway company in the condition in which they were originally brought into the state, is not completed and they are still within the protection of the commerce clause of the constitution."

Mr. Justice White, in the course of the opinion, said (p. 561):

"Viewing the order which is under consideration in this case as an assertion by the corporation commission of its general power to direct carriers engaged in interstate commerce to deliver all cars containing such commerce beyond their right of way and to a private siding, the order manifestly imposed a burden so direct and so onerous as to leave no room for question that it was a regulation of interstate commerce."

In *Western Union Telegraph Company vs. Pendleton*, 122 U. S. 347, the court held that a statute of Indiana which required telegraph companies to deliver despatches by messengers to the persons to whom the same were addressed, if they resided within one mile of the telegraph station, or within the same town, was repugnant to the commerce clause of the Constitution of the United States, as applied to despatches to other states.

Commenting on this case in *Western Union Telegraph Co. vs. Milling Company*, 218 U. S. 406, 416, Mr. Justice McKenna, speaking for the court, said:

"The former (the statute of Indiana) imposed affirmative duties and regulated the performance of the

business of the telegraph company. It besides ignored the requirements or regulations of another state, made its laws paramount to the laws of another state, gave an action for damages against the permission of such laws for acts done within their jurisdiction. Such a statute was plainly a regulation of interstate commerce, and exhibited in a conspicuous degree the evils of such interference by a state and the necessity of one uniform regulation."

Section 5258 of the Revised Statutes of the United States which was cited in the opinion of the court in *Adams Express Company vs. Kentucky*, 214 U. S. 218, provides:

"Every railroad company in the United States . . . is hereby authorized to carry upon and over its road . . . all passengers . . . freight and property on their way from any state to another state, and to receive compensation therefor."

In *Adams Express Company vs. Kentucky*, 206 U. S. 129, it was held that an express company engaged in the business of a common carrier of packages between the states that delivered a package of liquor in the regular course of business C. O. D., to a consignee in Kentucky who had not ordered the liquor, could not constitutionally be punished under a state statute which provided:

"All the shipments of spirituous, vinous or malt liquors, to be paid for on delivery, commonly called C. O. D. shipments, into any county, city, town, district or precinct where this act is in force shall be unlawful and shall be deemed sales of such liquors at the place where the money is paid or the goods delivered; the carrier and his agents selling or delivering such goods shall be liable jointly with the vendor thereof."

*Adams Express Company vs. Kentucky*, 206 U. S. 138; *American Express Company vs. Kentucky*, 206 U. S., 139, are to the same effect.

In *Adams Express Company vs. Kentucky*, 214 U. S. 218, the express company was prosecuted in a Kentucky court under a state statute which provided:

"Any person who shall sell, lend, give procure for or furnish spirituous, vinous or malt liquors, or any mixture of either, knowingly, to any person who is an inebriate or in the habit of becoming intoxicated or drunk by the use of any such liquors, or who shall suffer or permit any such liquors in his barroom, saloon or upon the premises under his control or in his possession, shall be fined, for each offense, fifty dollars, etc."

The evidence showed that the defendant as a common carrier engaged in the express business, had carried a package of liquor from a shipper in Nashville, Tennessee, and delivered it to the consignee, who was to the knowledge of the express company an inebriate, in Hart County, Kentucky.

In reversing a judgment against the Company, Mr. Justice Brewer speaking for the Court, said;

"Liquor, however obnoxious and hurtful it may be in the judgment of many, is a recognized article of commerce. License cases, 5 How. 504, 577; *Leisy vs. Hardin*, 135 U. S. 100, 110. In *Vance vs. Vandercook* (No. 1), 170 U. S. 438, 444, Mr. Justice White, delivering the opinion of the court, said: 'Equally well established is the proposition that the right to send liquors from one state into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and, hence, that a state law which denies such a right, or substantially interferes with or hampers the same, is in conflict with the Constitution of the United States.' That the transportation is not complete until delivery to the consignee is also settled."

A common carrier could not operate at all if on receipt of a liquor package at St. Louis or Chicago for a consignee in

Oklahoma, it were compelled to conduct an investigation in advance to determine whether the consignee intended to re-sell in violation of the state law. If the carrier in such case determined that the consignee did intend to sell illegally and refused to accept the shipment, it might be subjected to damages at the suit of the shipper under the Interstate Commerce Act, on proof that the consignee did not intend to sell illegally. On the other hand, if the carrier, believing that the shipment was what plaintiff calls a "good faith shipment," transports and attempts to deliver it in Oklahoma, and it turns out that the consignee intends to sell illegally, then the carrier is not governed by the federal law but by state law, and is liable to prosecution.

To make the intentions of the consignee the test of commerce between the states, is even a more visionary conception than one drawn from the "witty diversities" of the law of sales, (Mr. Justice Holmes, quoting *Yelv. 33*, in *Rearick vs. Pennsylvania*, 203 U. S. 507, 512); for, as *Brian, C. J.*, 17 *Edw. IV.*, *T. Pasch.*, case 2, said, as quoted by *Lord Blackburn*, in *Brogden vs. Metropolitan Rwy. Co.*, 2 App. Cas. 666, 692:

"It is trite law that the thought of man is not triable, for even the devil does not know what the thought of man is."

**The highest courts of Oklahoma have held that there is no provision in the Constitution or laws of the State which permits interference with interstate shipments prior to delivery to the consignee. That construction is binding on this Court.**

Section 3 of the Enabling Act of June 16, 1906, c. 3335, 34 Stat. 267. is not self executing. It does not purport to be; it provides that the "constitutional convention shall provide in said constitution . . . that the manufacture, sale, barter, etc." shall be prohibited for a period of 21 years. This directory provision of the Enabling Act does not operate *proprio vigore*; it requires the action of the constitutional convention to put it in force. *Groves vs. Slaughter*, 15 Peters, 449. *Rowan vs. Runnels*, 5 How. 138. *Sims vs. Hundley*, 6 How. 5

The highest courts of Oklahoma have decided that neither the constitution nor the act of March 24, 1908, were intended to interfere with the interstate traffic in liquors. *High vs. State*, 2 Okla. Cr. 161, 101 Pac., 115, decided by the criminal court of Appeals, was an information based on the clause of the constitution which provides, "or who shall ship or in any way convey such liquors from one place within this state to another place therein, except the conveyance of a lawful purchase as hereinafter authorized, shall be punished on conviction thereof, by fine not less than \$50. and by imprisonment not less than 30 days for each offense." The court held that conveying intoxicating liquors imported from another state from a railroad station to the home of the consignee was part of the interstate commerce transportation and not a violation of the above clause.

In *McCord vs. State*, 2 Okla. Cr. 214, 101 Pac. 280, the same court held that the prohibitory law of 1908 known as the "Billups Bill" does not by express language or by implica-

tion relate to interstate commerce transactions. *Hudson vs. State*, 2 Okla. Cr. 176, 101 Pac. 275, is to the same effect.

In *St. L. & S. F. Ry. Co. vs. State*, 109 Pac. 230, (May 10, 1910) the Supreme Court of Oklahoma held that the "Billups Bill" did not authorize state officers to take imported intoxicating liquors out of the possession of a railroad company prior to delivery to the consignee. The seizure in this case was made at Tulsa, Oklahoma, formerly a part of Indian Territory. The same conclusion was reached in *Rochester Milling Co. vs. State*, 109 Pac. 298, (May 10, 1910) which also involved a seizure made at Tulsa, Okla.

These decisions of the courts of Oklahoma are conclusive here as to the meaning of the state constitution and the state statute. *Morley vs. Lake Shore Railway Co.*, 146 U. S. 162, *Louisville vs. Nashville Railroad Co.*, vs Kentucky, 183 U. S. 503. If the constitution and the statute do not carry out the obligations which plaintiff argues were imposed on the state by the Enabling Act, in that the constitution and statute fail to prohibit the introduction of interstate shipments of liquor into what was formerly Indian Territory, it simply amounts to an argument that the state has broken faith with the United States in providing insufficient legislation. The state can not without further legislation enforce in its own courts or in this court a law which the Enabling Act contemplated, but which has never been enacted.

**If the Enabling Act was a surrender, by Congress to Oklahoma, of the power to regulate interstate commerce, it was beyond the power of Congress.**

Plaintiff contends that the Enabling Act conferred on Oklahoma the power to control the importation of liquors not



only into that part of the state which was formerly Indian Territory or an Indian reservation, but into all parts of the state. But, "we the people of the United States" deprived the states of the power to regulate interstate commerce and conferred it upon Congress. Congress did not by the Wilson Act delegate to the states any power to regulate or control the interstate shipment of liquor until after delivery to the consignee; *Rhodes vs. Iowa*, 170 U. S. 412; *Vance vs. Vandercook* (No. 1), 170 U. S. 438; *Foppiano vs. Speed*, 199 U. S. 501, 517: as said in the opinion in *Rhodes vs. Iowa*, 170 U. S. at 426 "of course this conclusion renders it entirely unnecessary to consider whether if the act of Congress had submitted the right to make interstate commerce shipments to state control it would be repugnant to the Constitution."

It was held in *In re Rahrer*, 140 U. S. 545, that the effect of the Wilson Act was to deprive the consignee of imported liquors of the right to re-sell in the state in the original package when the local law inhibited such sale. As said in *Rhodes vs. Iowa* (p. 424):

"Whilst it is true that the right to sell free from state interference interstate commerce merchandise was held in *Leisy vs. Hardin* to be an essential incident of interstate commerce, it is yet but an incident, as the contract of sale within a state in its nature was usually subject to the control of the legislative authority of the state."

Therefore the right which the Wilson Act withdrew from the domain of protected commerce was one which did not involve commerce in its "essential aspect" of a transaction in two states.

In *Heyman vs. Southern Ry. Co.*, 203 U. S. 270, 275, the Chief Justice said:

“And in subsequent cases the construction adopted in the previous cases of the word “arrival” as employed in the Wilson Act has been reaffirmed and applied. Thus in *American Express Company vs. Iowa*, 196 U. S. 133, in reviewing the *Rhodes* case, the meaning of the Wilson Act was again reiterated, the court saying (p. 142):

“The contention was that, as by the Wilson Act, the power of the state operated upon the property the moment it passed the state boundary line, therefore the state of Iowa had the right to forbid the transportation of the merchandise within the state and to punish those carrying it therein. This was not sustained. The court declined to express an opinion as to the authority of Congress, under its power to regulate commerce, to delegate to the states the right to forbid the transportation of merchandise from one state to another.”

It has never been determined that Congress could surrender to the states the power to regulate commerce between the states. *New York ex rel. Silz vs. Hesterberg*, 211 U. S. 31, in which the court held that the provision of the New York statute which imposed a penalty on one having game birds in possession during the closed season was valid as to imported game birds is cited. In that case no attempt was made to apply the New York statute to imported goods while in course of transportation, and it was evidently with that fact in mind that the court said:

“In the aspect in which the game law of New York is now before this court, we think it was a valid exercise of the police power” (p. 44).

In the course of the opinion the court contrasted *Plumley vs. Massachusetts*, 155 U. S. 461, 473, in which it was held that

a law of the state of Massachusetts which prevented the *sale* of oleomargine colored in imitation of butter was a legal exertion of police power on the part of the state as affecting interstate commerce only indirectly, with *Schollenberger vs. Pennsylvania*, 171 U. S. 1, which held invalid a state law directly prohibiting the *introduction* of oleomargine in interstate commerce. The provision against the introduction was held to be a direct and therefore an unlawful interference with interstate commerce.

The Enabling Act, as construed by plaintiff, surrenders the power over interstate commerce to Oklahoma alone, and surrenders to Oklahoma the power to control, not incidentally or indirectly, but directly, by preventing the delivery of interstate shipments to the consignees. It does not purport, like the Wilson Act, to surrender such control to each and every state, subject to state laws, but to Oklahoma only. Not being self-executing, the Enabling Act, if it is to be construed as affecting interstate commerce is not an act of Congress regulating such commerce, but is an act of Congress adopting a state law to be thereafter enacted under the police power of the state. In *In re Rahrer*, 140 U. S. 545, 560, it is said:

“Nor can Congress transfer legislative powers to a state nor sanction a state law in violation of the Constitution; and if it can adopt a state law as its own, it must be one that it would be competent for it to enact itself, and not a law passed in the exercise of the police power. *Cooley vs. Port Wardens of Philadelphia*, 12 How., 299; *Gunn vs. Barry*, 15 Wall. 610, 623; *United States vs. Dewitt*, 9 Wall 41.

It does not admit of argument that Congress can neither delegate its own powers nor enlarge those of a state.”

If it be assumed that Congress, under its power, over the Indians and Indian lands, could and did authorize Oklahoma to prohibit interstate traffic in liquors destined to Indian Territory, the Prohibitory Statute of 1908 being invalid as to that part of the state which was not Indian Territory, is invalid as a whole.

The Enabling Act required that the Constitution should provide that the manufacture, sale, barter, giving away or otherwise furnishing, of intoxicating liquors within those parts of the proposed state, then known as Indian Territory and the Osage Reservation, etc., should be prohibited for twenty-one years. The Constitution so provided. The Act of March 24, 1908, known as the Prohibitory or "Billups" Law, extended the prohibition clause to the entire state, except as therein provided: Conceding, for the sake of argument, that Congress intended, by the provisions of the Enabling Act, and acting within its powers over the Indians, to permit the state to prohibit the introduction of liquors in interstate commerce into what was formerly Indian Territory, the Prohibitory Law, if it is to be construed as preventing the introduction of such liquors into Indian Territory, must also be construed as preventing their introduction into all parts of the state, and its constitutionality must be determined on that basis. Under the construction of the statute urged by plaintiff in this case, defendants are participating as joint principals with the consignees who have paid the special United States tax in all parts of Oklahoma. The statute, in its operation on interstate shipments can not be limited in its operation to interstate shipments destined to points in what was formerly Indian Territory. The legislature passed a single, indivisible statute, unconstitu-

tional as we have argued above to shipments destined to points not formerly Indian Territory. The court can not amend the statute so as to limit its operation to shipments destined to Indian Territory.

In Trade Mark Cases, 100 U. S. 82, 98, the court held that Congress had power to legislate with respect to trade-marks used in interstate and foreign commerce, but that the statute before the court was void because it was broad enough to cover all commerce and could not by judicial construction be confined in its operation to interstate commerce, so as to save it from being declared unconstitutional. Mr. Justice Harlan said:

“It is not within the judicial province to give to the words used by Congress a narrower meaning than they are manifestly intended to bear in order that crimes may be punished which are not described in language that brings them within the constitutional power of that body.”

He quoted the words of Chief Justice Waite in *United States vs. Reese*, 92 U. S. 214:

“The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only. . . . To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty.”

In *James vs. Bowman*, 190 U. S. 127, 142, Mr. Justice Brewer said, page 142:

“Courts are not at liberty to take a criminal statute, broad and comprehensive in its terms and in these terms beyond the power of Congress, and change it to fix some

particular transaction which Congress might have legislated for if it had seen fit.

In *Illinois Central Railroad vs. McKendree*, 203 U. S. 514, the court, again referring to the cases and re-affirming the principle, held that an order of the Secretary of Agriculture, fixing a quarantine line and restricting the right to transport cattle across such line, which order in terms applied to all cattle transported from the south of the line to parts of the United States north thereof, was invalid as a whole, because it included cattle transported between two points within the state through which the line ran.

To the same effect are:

*Allen vs. Louisiana*, 103 U. S. 80.  
*United States vs. Harris*, 106, U. S. 629, 641.  
*Poindexter vs. Greenhow*, 114 U. S. 270, 305.  
*Sprague vs. Thompson*, 118 U. S. 90, 94.  
*Baldwin vs. Franks*, 120 U. S. 678, 685.  
*Connolly vs. Union Sewer Pipe Co.* 184 U. S. 540, 565.  
*United States vs. Ju Toy*, 198 U. S. 253, 262.

The reasons for applying the rule strictly in construing criminal statutes are discussed at length in *Wynehamer vs. The People*, 13 N. Y. 378, 424, 441.

In the *Employers Liability Cases*, 207 U. S. 463, the court affirmed the rule of *Illinois Central Railroad vs. McKendree*, 203 U. S. 514, and *Trade Mark Cases*, 100 U. S. 82, and held as indicated in the syllabus that:

"While it is the duty of this court to so construe an Act of Congress as to render it constitutional if it can be lawfully done, an ambiguous statute can not be re-written to accomplish this result.

"Where a statute contains some provisions that are constitutional and some that are not, effect may be given to the former by separating them from the latter, but

this rule does not apply where the provisions of the statute are dependent upon each other and are indivisible, or where it does not plainly appear that Congress would have enacted the constitutional legislation without the unconstitutional provisions."

### CONCLUSION.

On the several grounds above stated we urge that the demurrers should be sustained. In addition we suggest that there is no essential merit in the case made by the bill. It is not alleged that any of the places at which deliveries of liquors are made is Indian country to-day, or that defendants are furnishing or supplying liquor to Indians. No facts are shown to explain why the state can not enforce in its own courts, against the consignees, the apparently ample provisions of the state law.

Respectfully submitted,

LAWRENCE MAXWELL,

JOSEPH S. GRAYDON,

Counsel.

JAMES L. MINNIS,  
Of Counsel.

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RECORDS & COMM. DIV.

IN SENATE

# Supreme Court of the United States

No. 14, 000,000

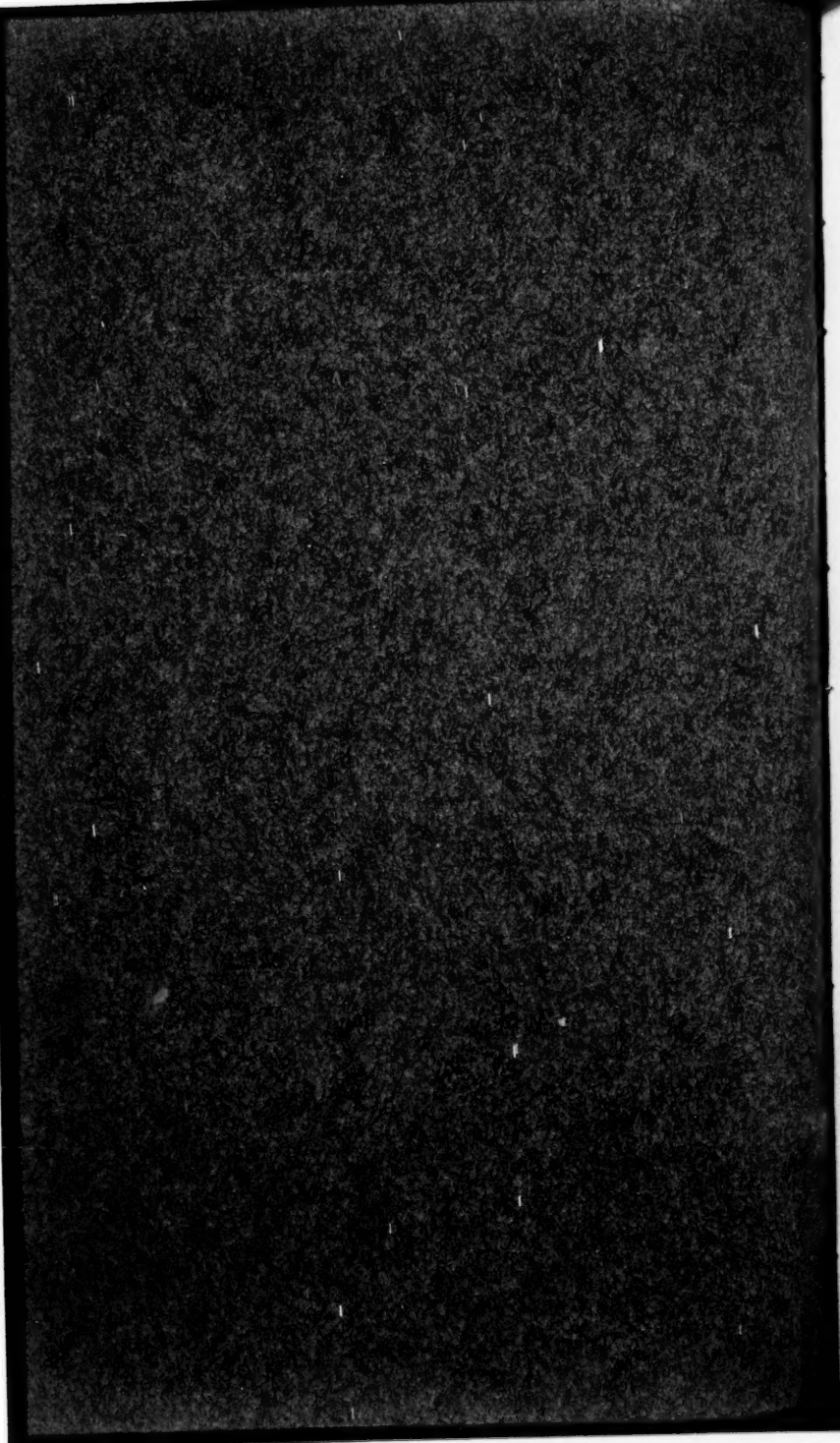
THE STATE OF OKLAHOMA

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,  
GULF, COLORADO & SANTA FE RAILWAY COMPANY, ST.  
LOUIS, BIRMINGHAM & SOUTHERN RAILWAY COM-  
PANY, ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY,  
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,  
KANSAS CITY SOUTHERN RAILWAY COMPANY, FT. SMITH  
& WESTERN RAILROAD COMPANY, THE CHICAGO, ROCK  
ISLAND & PACIFIC RAILWAY COMPANY, AMERICAN  
EXPRESS COMPANY, PACIFIC EXPRESS COMPANY, AND OTHERS  
FRIENDS & COMPANY

BRIEF IN SUPPORT OF PETITION TO SET ASIDE DECISION OF  
CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

WILLIAM C. GIBBS  
CHARLES H. STANTON





IN THE  
Supreme Court of the United States.

THE STATE OF OKLAHOMA,  
Plaintiff,

VS.

THE ATCHISON, TOPEKA & SANTA FE  
RAILWAY COMPANY; GULF, COLO-  
RADO & SANTA FE RAILWAY COM-  
PANY; ST. LOUIS, IRON MOUNTAIN &  
SOUTHERN RAILWAY COMPANY; ST.  
LOUIS & SAN FRANCISCO RAILROAD  
COMPANY; THE MISSOURI, KANSAS  
& TEXAS RAILWAY COMPANY; KAN-  
SAS CITY SOUTHERN RAILWAY COM-  
PANY; FT. SMITH & WESTERN RAIL-  
ROAD COMPANY; THE CHICAGO, ROCK  
ISLAND & PACIFIC RAILWAY COM-  
PANY; AMERICAN EXPRESS COM-  
PANY; PACIFIC EXPRESS COMPANY,  
and WELLS FARGO & COMPANY.  
Defendants.

No. 14,  
Original.

**Brief in Support of Demurrer to Bill  
on Behalf of Defendant Wells  
Fargo & Company.**

The plaintiff in this case, the State of Oklahoma, seeks to enjoin the defendants, common carriers in interstate commerce, from carrying and delivering shipments of intoxicating liquor to consignees in those portions of the State formerly known as the Indian Territory and the Osage Indian Reserva-

tion, and also to certain individuals in other portions of the State alleged to be holders of Internal Revenue licenses.

The original jurisdiction of this Court has been invoked by various States to enjoin as nuisances obstructions to interstate commerce, but so far as we have been able to find, no such suit has ever before been brought to enjoin interstate commerce itself as a nuisance.

While it is alleged in the bill "that the importation and furnishing to said persons named in said list by said defendants of such intoxicating liquors with the intent that the same shall be used for resale in the said State \* \* \* is a public nuisance in said State," no facts are stated that support this conclusion, and, indeed, there is no allegation in the bill, nor do we think any intention on the part of the learned Attorney-General of Oklahoma, to charge that the defendants have any interest in or connection with the sale of the liquor. It is apparent that the nuisance, if nuisance there be, is in the sale or keeping for sale of the liquor, and not in its transportation into the State; and though the sale of liquor in Oklahoma is prohibited by statute, and the keeping of places for its sale made a public nuisance, it does not follow that every step which *may* lead directly to such sale is a nuisance, else the sale in Illinois or Missouri of such liquor might be enjoined because of the possibility of its unlawful use in Oklahoma. Furthermore, it is apparent upon the face of the bill that the injuries complained of from the alleged nuisance are infractions of the public policy of the State as laid down in its statutes, rather than trespass upon the property interests of the State or of its inhabitants, and the effect of the relief prayed for in the bill would be to enforce the penal laws of Oklahoma by the contempt process of this Court.

While it is to be observed that the only instance

in which this Court has enjoined as a nuisance an obstruction to interstate commerce at the suit of a State was where the State had a property interest, apart from its governmental capacity (*Pennsylvania v. Wheeling Bridge Co.*, 13 How. 519), we hope that in this case, as in *South Carolina v. Georgia* (93 U. S. 4), and *Wisconsin v. Duluth* (96 U. S. 379), it may not be necessary to decide the controversy upon this point, but that a decision may be rendered upon the broader principle involved in this much vexed question.

The various and important objections to the bill are so fully and ably discussed in the briefs of counsel for other defendants that we will confine our argument to a single point, *i. e.*:

**That the plaintiff has no interest in and can exercise no control over interstate commerce, even though its internal policy may be infringed thereby.**

In *South Carolina v. Georgia*, 93 U. S. 4, it was sought to enjoin an obstruction in a navigable river as a nuisance, but this Court held that the obstruction being made pursuant to the authority of Congress, no nuisance existed and the injunction was denied. The Court said, citing the case of *Gilman v. Philadelphia*, 3 Wall. 724:

"Commerce includes navigation. The power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable rivers of the United States, which are accessible from a State other than those in which they lie. For this purpose they are the public property of the nation, and subject to all the requisite legislation by Congress. This, necessarily, includes the power to keep these open and free from any obstruction to their navigation interposed by the States, or

otherwise; to remove such obstructions where they exist; and to provide, by such sanctions as they may deem proper, against the occurrence of the evil and for the punishment of the offenders. \* \* \* Such has uniformly been the construction given to that clause of the Constitution which confers upon Congress the power to regulate commerce."

Again, citing Clinton Bridge case, 10 Wall. 654, the Court said:

"It (the case) asserts plainly the power of Congress to declare what is and what is not an illegal obstruction in a navigable stream. \* \* \* We can come to no other conclusion than that the defendants are acting within the authority of the statutes, and that the structure at the cross-tides intended to divert the water from the northern channel into the southern is, in the judgment of the law, no illegal obstruction. \* \* \* The plaintiff has, therefore, made no case sufficient to justify an injunction, even if the State is in a position to ask for it. But, in resting our judgment upon this ground, we are not to be understood as admitting that a State, when suing in this Court for the prevention of a nuisance in a navigable river of the United States, must not aver and show that it will sustain some special and peculiar injury therefrom, such as would enable a private person to maintain a similar action in another court. Upon that subject we express no opinion. It is sufficient for the present case to hold, as we do, that the acts of the defendant, of which South Carolina complains, are not unlawful and, consequently, that there is no nuisance against which an injunction should be granted."

In *Wisconsin v. Duluth, supra*, the State of Wisconsin sought to enjoin the City of Duluth, Minnesota, from constructing a canal which diverted the waters of the St. Louis River, and the Court,

upon the ground that Congress had adopted, recognized and taken charge of the work of harbor improvements at Duluth, denied the injunction, the Court saying:

"Nor can there be any doubt that such action is within the constitutional power of Congress. It is a power which has been exercised ever since the government was organized under the Constitution. The only question ever raised has been, how far and under what circumstances the exercise of the power is exclusive of its exercise by the States. And while this court has maintained, in many cases, the right of the States to authorize structures in and over the navigable waters of the States, which may either impede or improve their navigation, in the absence of any action of the General Government in the same matter, the doctrine has been laid down with unvarying uniformity, that when Congress has, by any expression of its will, occupied the field, that action was conclusive of any right to the contrary asserted under state authority."

From these cases we understand the rule to be, that where Congress, in the exercise of its constitutional power, has taken exclusive jurisdiction of a matter, a State has no interest in nor control over such matter; not only in respect to limitations and restrictions by State statute, but also in respect to maintaining an action in this Court upon the same subject matter.

Since Congress has taken exclusive jurisdiction of interstate commerce,

*Leisy v. Hardin*, 135 U. S., 108;

*Rhodes v. Iowa*, 170 U. S., 412;

*In re Debs*, 158 U. S., 581;

*Bowman v. Chicago & Northwestern Ry. Co.*, 125 U. S., 465;

*Hall v. DeCuir*, 95 U. S., 485;

and by its enactment has imposed upon these defendants the duty of carrying such commerce.

Section 1 of the Act to Regulate Commerce, as amended June 18, 1910, in part as follows:

"And it is hereby made the duty of every common carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto;"

and since intoxicating liquor is an article of lawful commerce,

*Leisy v. Hardin; Rhodes v. Iowa, supra;*

upon the carriage of which in interstate commerce Congress has legislated specifically

(Sections 238, 239 and 240 of the Act of Congress March 4, 1909, codifying the Penal Laws of the United States, requiring delivery to a *bona fide* consignee only, or upon his written order, prohibiting the carriers from acting as the agent for buyer or seller in the sale thereof and requiring the packages containing the same to be labeled with the name of consignee and the nature and quantity of the contents),

it would seem clear that under the decisions of this Court the performance by the defendant of the duty so enjoined upon it by Congress in the carriage of intoxicating liquors in interstate commerce cannot be adjudged a nuisance, and that the State has no such interest as would entitle it to relief prayed for from this Court.

There is, however, a further suggestion in the bill, that the State has a financial interest in its monopoly of the sale of liquor.

If this monopoly be a governmental policy to restrict the sale of liquor to that used for sacramental, medicinal and industrial purposes, it is

clear that any injury to the State resulting from the sales by others of such liquor is not an injury to the property of the State or a loss of financial gain, but merely an infraction of its public policy.

If, on the other hand, the State has reserved to itself this monopoly for the purposes of trade and financial gain, then the statute creating it would seem to be obnoxious to the Act of Congress known as the "Anti-Trust Law."

For the reasons assigned, the defendant respectfully urges that the plaintiff is not entitled to the relief prayed for and that the demurrer to the bill should be sustained and the proceeding dismissed.

Respectfully submitted,

WILLIAM W. GREEN,  
CHARLES W. STOCKTON,  
Solicitors for Defendant, Wells  
Fargo & Company.

New York, January 16, 1911.



**APPENDIX.****ACT TO REGULATE COMMERCE.**

(Approved Feb. 4, 1887, as amended June 18, 1910.)

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone and cable companies (whether wire or wireless) engaged in sending messages from one State, territory or district of the United States, to any other state, territory, or district of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water, when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States or the District of Columbia, to any other State or Territory of the United States or the District of Columbia, or from one place in a territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and car-

ried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph or cable wholly within one State and not transmitted to or from a foreign country from or to any state or territory as aforesaid.

The term "common carrier" as used in this Act shall include express companies and sleeping car companies. The term "railroad" as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards and grounds used or necessary in the transportation or delivery of any of said property; and the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and

furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.

All charges made for any service rendered or to be rendered in the transportation of passengers or property and for the transmission of messages by telegraph, telephone or cable, as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: Provided, that messages by telegraph, telephone or cable, subject to the provisions of this Act, may be classified into day, night, repeated, unpeated, letter, commercial, press, government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages; and provided further, that nothing in this Act shall be construed to prevent telephone, telegraph and cable companies from entering into contracts with common carriers for the exchange of services.

And it is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing and delivering property for

transportation, the facilities for transportation, the carrying of personal, sample and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing and delivery of property subject to the provisions of this Act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation and delivery of property subject to the provisions of this Act upon just and reasonable terms, and every such unjust and unreasonable classification, regulation and practice with reference to commerce between the states and with foreign countries is prohibited and declared to be unlawful.

No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employes and their families, its officers, agents, surgeons, physicians and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning after discharge; to necessary caretakers of live stock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, post-office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents,

witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation; and provided further, that this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this Act. *Provided, further*, That the term "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood and minor children during minority of persons who died, while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offence, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty. Juris-

diction of offenses under this provision shall be the same as that provided for offenses in an Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and any amendment thereof.

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms, a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable, and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper or owner of such lateral, branch line of railroad may make complaint to the

Commission, as provided in section thirteen of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

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*Act of March 4, 1909, Chapter 321; 1909 Supp. to Fed. Stat. Annot., pages 472 and 473; 35 Stat. L., 1136 and 1137.*

Sec. 238. [*Interstate shipment of intoxicating liquors; delivery of to be made only to bona fide consignee.*] Any officer, agent, or employe of any railroad company, express company, or other common carrier, who shall knowingly deliver or cause to be delivered to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the *bona fide* consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind which has been shipped from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

Sec. 239. [*Common carriers, etc., not to collect purchase price of interstate shipment of intoxicating liquors.*] Any railroad company, express company, or other common carrier, or any other person who, in connection with the transportation of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall collect the purchase price or any part thereof, before, on, or after delivery, from the consignee, or from any other person, or shall in any manner act as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined not more than five thousand dollars.

Sec. 240. [*Packages containing intoxicating liquors shipped in interstate commerce to be marked as such.*] Whoever shall knowingly ship or cause to be shipped, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, any package of or package containing any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, unless such package be so labeled on the outside cover as to plainly show the name of the consignee,



the nature of its contents, and the quantity contained therein, shall be fined not more than five thousand dollars; and such liquor shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law.

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### THE SHERMAN ANTI-TRUST ACT.

An Act to protect trade and commerce against unlawful restraints and monopolies.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:* Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SECTION 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SECTION 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or the District of Columbia, or in restraint

of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States and foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SECTION 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the attorney-general, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SECTION 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

SECTION 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law.

SECTION 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any Circuit Court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SECTION 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Approved, July 2, 1890.

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ORIGINAL NO. 10

OF THE  
**Supreme Court of the United States**

STATE OF OREGON,

Plaintiff

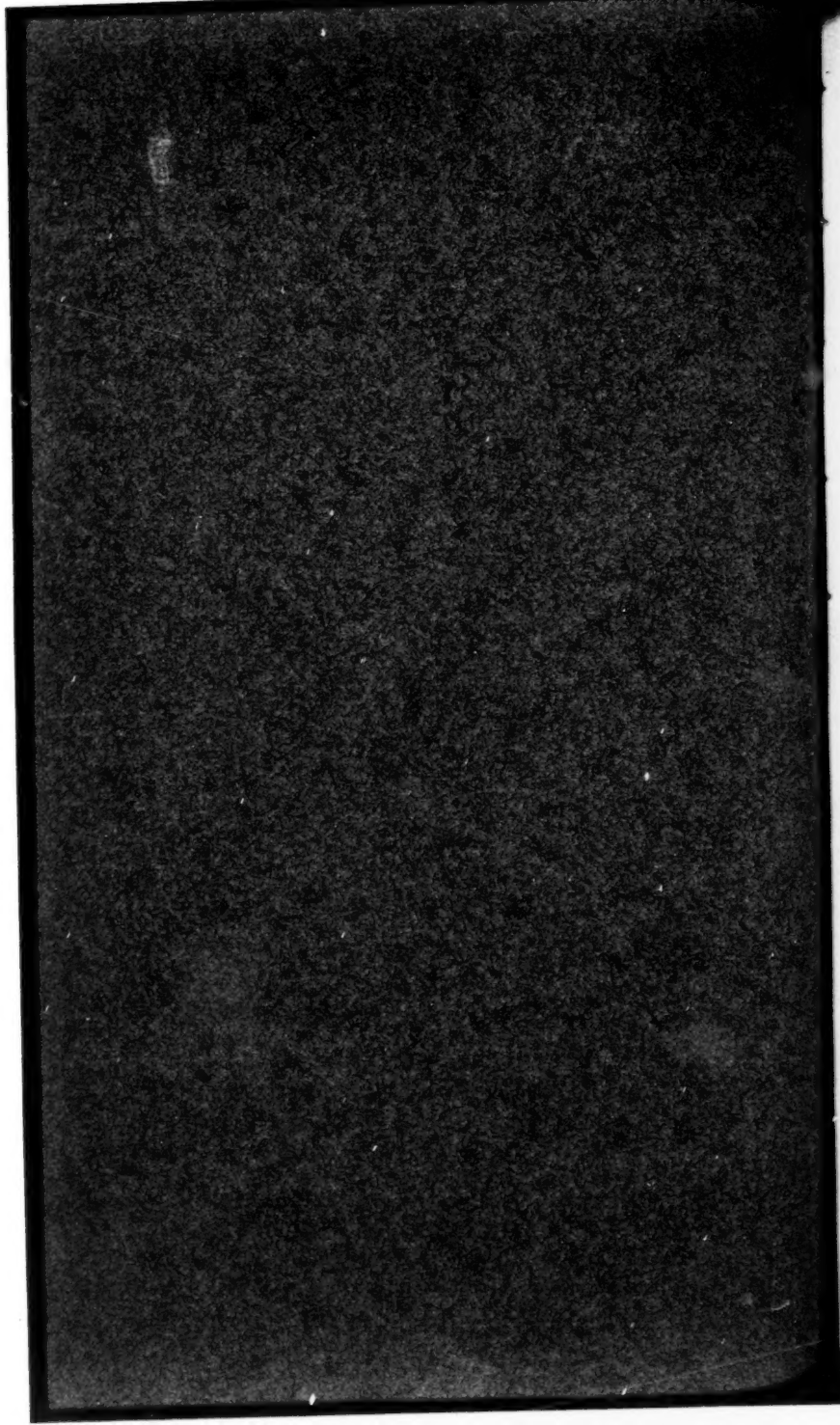
ONE LITCHFIELD TOWNSHIP & SANTA FE RAILWAY  
COMPANY, INC.

Defendant

**BRIEF IN SUPPORT OF PETITION TO FILE IN RECORD OF  
DEFENDANT AMERICAN EXPRESS COMPANY**

JOSEPH W. WELLS  
J. W. WELLS, JR.

Counsel for Defendant American Express Company



IN THE  
Supreme Court of the United States.

STATE OF OKLAHOMA,  
Plaintiff,

vs.

THE ATCHISON, TOPEKA AND  
SANTA FE RAILWAY COM-  
PANY *et al.*,

Defendants.

Original No. 14.

**BRIEF IN SUPPORT OF DEMURRER TO BILL  
ON BEHALF OF DEFENDANT AMERICAN  
EXPRESS COMPANY.**

**Statement.**

The State of Oklahoma, by its bill of complaint in this case, seeks to enjoin and restrain the defendant carriers, all of whom are engaged in interstate commerce, from accepting, transporting and delivering interstate shipments of intoxicating liquors to any and all persons within the limits of that part of said State which was formerly Indian Territory, or the Osage Indian Reservation, or any other part of said State which existed as Indian reservations on the 1st day of January, 1906; and to enjoin and restrain the said defendants from accepting, transporting and delivering interstate shipments of intoxicating liquors to certain persons in said State who have paid the special tax required by the United States of retail liquor dealers.

Thus there are two separate and distinct questions raised, upon which relief is asked for by the State in its bill, and in this brief they will be treated separately.

**ARGUMENT.****I.**

**Can the American Express Company be restrained and enjoined from accepting, transporting and delivering interstate shipments of intoxicating liquors to persons in that part of the State of Oklahoma which was formerly Indian Territory or the Osage Indian Reservation, or which existed as Indian Reservations, on January first, 1906?**

Complainant bases its right to an injunction in this particular upon various treaties of the United States with certain Indian tribes, in the territory mentioned, and upon the Enabling Act of June 16, 1906, under and by which the State of Oklahoma was constituted and formed, and upon the Constitution of the State of Oklahoma, adopted and promulgated in pursuance of the provisions of said Enabling Act.

The question of the right and duty of the express companies to accept, transport and deliver interstate shipments of intoxicating liquors to persons in that part of the State of Oklahoma formerly known as Indian Territory, has been fully considered and passed upon by the United States District Court for the Western District of Arkansas in the case of *United States ex rel. Friedman v. United States Express Company*, 180 Fed., 1006, in which case a petition for mandamus was filed by the United States on the relation of Louis Friedman, and another, doing business as Friedman & Company, against the United States Express Company, to compel the defendant to accept, transport and deliver

intoxicating liquors to complainants' customers, residing in that part of the State of Oklahoma commonly known as Indian Territory, &c.

The Court in that case granted the mandamus asked for, and held that the express company, under its duty as a common carrier, was required to accept, transport and deliver these interstate shipments of intoxicating liquors, notwithstanding the Enabling Act and the provisions of the Oklahoma Constitution, upon which the complainant relies in this Court.

In that case, the United States District Court further held that upon the entrance of the State of Oklahoma into the Union, there was no longer any "Indian Country" in any part of the State, saying among other things (p. 1013):

"A brief historical reference should be made to the political, social and legal status of the Indians in the Indian Territory, and of the Indian Territory itself. When Oklahoma was admitted as a state in the Union, the whole of Oklahoma Territory, including the Indian Territory, had been surveyed, and allotments had been made as to certain lands containing minerals and certain forest reservations, which were still held in trust by the United States for the Indian. Individual patents had been issued, or were in process of issuance, to the allottees; their tribal governments had been abolished; many thousands of United States citizens, including foreigners, pursuing all the lawful avocations of life, resided there; and towns and cities, with municipal governments and general laws and courts, were in full operation. By the Enabling Act United States courts were created, and it was provided that 'The Circuit and District Courts for each of said districts and the judges thereof, respectively, shall possess the same powers and jurisdiction and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations.'

"It was also provided that the laws of the



territory of Oklahoma, so far as applicable, 'shall extend over and apply to said state until changed by the Legislature.' True, the United States imposed certain restrictions as to certain classes of Indians upon the alienation of their lands, and reserved the power to enforce these, and to enact other legislation for the protection of the Indians and their property. They were all citizens of the United States and citizens of the State of Oklahoma. The United States reserved no power, in express terms, of sole and exclusive jurisdiction over the Indian Territory or the Indians; on the contrary, all the citizens of Oklahoma were made subject to the jurisdiction of the State of Oklahoma, except as to certain reserved powers mentioned in the act, and which in no sense invaded or attempted to invade the police powers of the state."

## II.

**The State of Oklahoma is not entitled to an injunction restraining the defendant from accepting, transporting and delivering interstate shipments of intoxicating liquor to persons in said State who have paid the special tax required by the United States of retail dealers.**

As this Court is well aware, under our form of government, there are certain powers which belong to the State exclusively, certain powers which belong to the United States exclusively, and certain matters upon which the State is authorized to act in the absence of action by the United States.

By a long line of decisions, however, this Court has uniformly held that the channels of interstate commerce must be kept absolutely free, and that no

State, by legislation or otherwise, has any power to interfere with interstate commerce, or with the proper subjects of interstate commerce.

The mere fact that a citizen of the State of Oklahoma has a federal license, authorizing him to retail liquor under the federal laws, does not give any right to such a person to retail liquor in violation of the laws of the State of Oklahoma, and is not of itself alone conclusive that he is engaged in or is about to engage in the the sale of liquor in violation of the laws of the State. Nor does the possession of such a license by a person to whom liquor is shipped in interstate commerce relieve the carrier of its duty under the statutes of the United States to accept, transport and deliver interstate shipments of liquor to such person (*F. W. Cook Brewing Co. v. Louisville & Nashville RR. Co.*, 172 Fed., 117, 120). If such person, in fact, violates the law of Oklahoma by selling the liquor, after it has finished its interstate journey, that is a matter that can be readily corrected by the criminal process of the courts of Oklahoma, and is a matter with which the carrier has nothing to do.

Even if it were shown that the carrier had actual knowledge of the fact that the persons named as consignees had such licenses, it would be quite immaterial. The State has no right to designate the persons to whom interstate shipments of liquors shall be consigned and carried, and delivered by the carrier, nor to prohibit or in any way limit the transportation or delivery of such shipments to any person or class of persons. If this were not true, the State could wholly exclude interstate shipments of liquor. The constitutional privilege protects the transaction from any exercise of those powers, so long as the shipment retains its interstate character, regardless of the fact that the person or persons named as consignees, and to whom it is delivered, may or may not, after delivery, make an unlawful use of such shipment.

*Adams Express Co. v. Kentucky*, 214  
U. S., 218.

The State of Oklahoma cannot either directly or indirectly, by statute or by court decisions, or in any other manner, interfere with the transportation and delivery of legitimate articles of interstate commerce. Therefore, this case is really brought down to very narrow limits, and the sole and real question to be decided by this Court is: Whether intoxicating liquor is still a legitimate article of interstate commerce, the transportation of which is protected by the commerce clause of the Constitution of the United States.

The American Express Company, by its profession and by the common law, is a common carrier, and as such is required to accept, transport and deliver all legitimate articles of commerce which are offered to it for shipment.

It is also made a common carrier by the Act to Regulate Commerce, and its amendments.

By Section 1 of said act it is provided that the term "common carrier" as used in the act shall include express companies. Said Section 1 defines transportation, and provides that it shall be the duty of every common carrier subject to the provisions of the act to furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and said Section 1 also makes it the duty of such common carriers to provide reasonable facilities for operating such through routes and to establish, observe and enforce just and reasonable classification of property for transportation, with reference to which rates, tariffs, regulations or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates or tariffs, the issuance, form and substance of tickets, receipts, bills of lading, and the manner and method of presenting, marking, packing and delivering property for transportation, facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing and delivering of property sub-

ject to the provisions of the act, which may be necessary or proper to secure the safe and prompt receipt, handling, transportation and delivery of property subject to the provisions of the act. upon just and reasonable terms, and etc.

In addition to this common law and statutory duty, the American Express Company has the legal right in the conduct of its business to accept, transport and deliver such interstate shipments of liquor.

The following propositions, which are stated in the language of this Court, must be deemed to be firmly established:

1. That "ardent spirits, distilled liquors, ale and beer are subjects of exchange, barter and traffic, like any other commodity in which a right of traffic exists, and are so recognized by the usages of the commercial world, the laws of Congress and the decisions of the courts."

*Leisy v. Hardin*, 135 U. S., 100-110.

2. That "the transportation of merchandise from one State into and across another is interstate commerce and is protected from the operation of State laws from the moment of shipment, whilst in transit, and up to the ending of the journey by the delivery of the goods to the consignee at the place to which they were consigned."

*Bowman v. Chicago & Northwestern Ry. Co.*, 125 U. S., 465;

*Rhodes v. Iowa*, 170 U. S., 412, 415.

3. That "the power to ship merchandise from one state into another carries with it, as an incident, the right in the receiver of the goods to sell them in the original packages, any state regulation to the contrary notwithstanding; that is to say, that the goods received by Interstate Commerce remain under the shelter of the Interstate Commerce clause of the Constitution until, by a sale in the original package, they have been com-

mingled with the general mass of property in the state."

*Leisy v. Hardin*, 135 U. S., 100;

*Vance v. Vandercook Co.*, 170 U. S., 438, 444.

4. That the last preceding "proposition, whilst generically true, is no longer applicable to intoxicating liquors since Congress, in the exercise of its lawful authority," by the passage of the Act of August 8, 1890, "has recognized the power of the several states to control the incidental right of sale in the original packages of intoxicating liquors shipped into one state from another, so as to enable the state to prevent the exercise by the receiver of the accessory right of selling intoxicating liquors in original packages except in conformity to lawful state regulations."

*In re Rahrer*, 140 U. S., 545;

*Rhodes v. Iowa*, 170 U. S., 412;

*Vance v. Vandercook Co.*, 170 U. S., 438, 445.

5. That the above mentioned Act of Congress, which provides that intoxicating liquors "transported into any state or territory, or remaining therein for use, consumption, sale or storage, therein, shall, upon arrival in such state or territory, be subject to the operation and effect of the laws of such state or territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such \* \* \* liquors had been produced in such state or territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise, did not intend to, and did not cause the power of the state to attach to an interstate commerce shipment, whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee."

*Rhodes v. Iowa*, 170 U. S., 412, 426.

6. That "the power to ship from one state into another embraces of necessity the right to have the goods carried to the place of destination, and be delivered at that point to the consignee," and that the fundamental right which these decisions hold to be protected from the operation of state laws by the Constitution, is "the continuity of shipment of goods coming from one state into another from the point of transmission to the point of consignment and the accomplishment thereof of the delivery covered by the contract."  
 \* \* \* "The power which it was held in the Bowman Case the state did not possess was that of stopping interstate shipments at the state line by breaking their continuity and intercepting their course from the point of origin to the point of consummation."

Rhodes *v. Iowa*, 170 U. S., 412-419.

See also

American Express Co. *v. Iowa*, 196 U. S., 133;

Adams Express Co. *v. Kentucky*, 206 U. S., 129;

F. W. Cook Brewing Co. *v. Louisville & Nashville RR. Co.*, 172 Fed., 117.

In the last case on the subject, decided by this Court, viz., *Adams Express Co. v. Kentucky*, 214 U. S., 218, the Court summarizes its former views upon the subject and confirms them in the following language:

"However obnoxious and hurtful, in the judgment of many, liquor may be, it is a recognized article of commerce (*Leisy v. Hardin*, 135 U. S., 100); and a state law denying the right to send it from one state to another is in conflict with the commerce clause of the Constitution of the United States (*Vance v. Vandercook*, 170 U. S., 438).

"Transportation of an article in interstate commerce is not completed until the article is delivered to the consignee; and the Wilson Act of August 8, 1890, does not cause state

laws to attach to an interstate shipment until the completion of the transit by delivery to the consignee (*Rhodes v. Iowa*, 170 U. S., 412).

"Generally speaking, the police power belongs to, and is to be exercised by, the State, but it must yield to Congress wherever it conflicts with the powers belonging exclusively to Congress.

"Congress has by Sec. 5258, Revised Statutes, authorized every railroad company in the United States to carry all passengers and freight over its road from one State to another State and receive compensation therefor, and any exercise of State authority directly regulating interstate commerce is repugnant to the commerce clause of the Constitution (*Atlantic Coast Line v. Wharton*, 207 U. S., 328).

Sec. 1307 of the Statutes of Kentucky of 1903, making it an offence to furnish, sell or give liquor to any person who is an inebriate, as applied to a common carrier bringing the liquor to such a person from another State, is an attempted regulation of interstate commerce, and as such is in conflict with the commerce clause of the Constitution of the United States and void."

The courts of Oklahoma also without exception have held that the right of a person residing in the State to have interstate shipments of liquor brought into the State and delivered to him is clear; and that the State can in no way interfere with such transportation and delivery until the actual receipt by the consignee of the liquor at his place of business or residence, and these decisions, based upon the construction put upon the constitutional provisions and legislative acts of Oklahoma, are binding upon the State of Oklahoma so far as the intent and effect thereof is involved.

Thus in the case of *High v. State*, 101 Pac., 115, the Criminal Court of Appeals of Oklahoma, after reviewing the decisions of this Court, with refer-

ence to interstate shipments of intoxicating liquors, at page 120 said:

"These repeated and deliberate declarations of the Supreme Court of the United States establish two propositions: First, that the Act of Congress, commonly known as the 'Wilson Act,' permits the States, in the exercise of their police power, to enact laws prohibiting the sale and making interstate shipments of intoxicating liquors upon their arrival in the State subject to the police power of the State. However, the State legislatures are not authorized to declare when such importation shall become subject to State control, nor can the State in any manner change or affect the enactment made by Congress on the subject. Under the Constitution, Congress has the exclusive power. Second: That the right to ship intoxicating liquors from one State to another and the shipment of the same is interstate commerce, and any citizen has the right to ship intoxicating liquors from one State to another, and a State law, organic or legislative, which denies or diminishes this right, or substantially abridges, interferes with, or hampers the same, is in conflict with the Constitution of the United States."

See also:

Hudson v. State, 101 Pac., 275;

McCord v. State, 101 Pac., 280;

State v. 18 Casks of Beer, *et al.*, 104 Pac., 1093.

In the case of *St. Louis & San Francisco Ry. Co. v. State*, 109 Pac., 230, the Supreme Court of Oklahoma held that it was illegal for State officials to take from the carrier, before actual delivery to consignee, certain cases of whiskey, the interstate shipment not having ended.

The intention of Congress, that the channels of interstate commerce shall be kept open for transportation of intoxicating liquors under certain restrictions only is clearly shown by the Act to Codify, Revise and Amend the Penal Code of the United States, passed



March 4, 1909, and particularly Sections 238, 239 and 240 thereof, under and by which elaborate and stringent rules are made for the marking of packages of liquors shipped in interstate commerce, and under and by which provisions are made that such shipments shall only be delivered to the *bona fide* consignee, or upon the written order of such consignee in each instance, and prohibiting the common carrier from collecting the purchase price of such liquors either before or after delivery, or in any manner acting as the agent of the buyer or seller of such liquor.

In other words, by these provisions of the Criminal Code of the United States, a common carrier handling interstate shipments of intoxicating liquor is very properly confined to its business of transporting such shipments, and is prohibited from doing anything in connection with them, except the transportation and delivery thereof to the consignee or upon his written order.

The very fact that Congress by these sections has prohibited the carrier from transporting C. O. D. shipments of liquor, and has limited the carrier's business solely to that of transportation, shows that it was the intention of Congress that such transportation should not be limited or restricted, and that straight shipments of intoxicating liquor in interstate commerce should be allowed.

These provisions clearly show that Congress has been unwilling to go any further in limiting the interstate transportation of intoxicating liquors, although numerous bills have been introduced in Congress from time to time upon this subject with a view to such further limitation.

It is respectfully submitted that the Bill of Complaint herein should be dismissed.

JOSEPH W. WELSH,  
T. B. HARRISON, Jr.,  
Counsel for Defendant  
American Express Com-  
pany.

Original No. 14.

U. S. Supreme Court U. S.  
FILED

JAN 4 1911

JAMES H. McNEELY,  
Clerk.

# In the Supreme Court of the United States

STATE OF OKLAHOMA, *Plaintiff,*

VS.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY  
COMPANY ET AL, *Defendants.*

## BRIEF IN SUPPORT OF DEMURRER TO BILL ON BEHALF OF

The Atchison, Topeka & Santa Fe Railway Company, the Gulf, Colorado & Santa Fe Railway Company, the Kansas City Southern Railway Company, the Chicago, Rock Island & Pacific Railway Company, the St. Louis & San Francisco Railroad Company and the Ft. Smith & Western Railway Company, by

S. T. BLEDSOE

*Of Counsel:*

GARDINER LATHROP,  
ROBERT DUNLAP,  
J. R. COTTINGHAM,  
C. O. BLAKE,  
R. A. KLEINSCHMIDT,  
C. E. WARNER.



# In the Supreme Court of the United States

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Original No. 14.

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STATE OF OKLAHOMA, *Plaintiff,*

VS.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY  
COMPANY ET AL, *Defendants.*

---

Plaintiff seeks by its bill to enjoin and restrain the various defendants from engaging in the interstate transportation of intoxicating liquors from places outside of the State of Oklahoma to within any part of said state which was formerly the Indian Territory or the Osage Reservation, or which existed as an Indian reservation on the first day of January, 1906; and that the defendants also be enjoined and restrained from engaging in the interstate transportation of intoxicating liquors to persons named in the Bill (pp. 10 to 60, inclusive), who, it is charged, have paid the special tax required by the United States of liquor dealers regardless of in what part of the State of Oklahoma they reside.

There are, therefore, two branches to the case.

Plaintiff's first contention is based upon the assumption that interstate transportation of intoxicating liquors into that part of the State of Oklahoma which formerly constituted Indian Territory and the Osage Nation, and which was occupied as an Indian reservation on January 1, 1906, is prohibited and unlawful.

The second contention is based upon the assumption that persons who have paid the special revenue tax required of liquor dealers are not entitled to have transported by interstate transportation and delivered to them intoxicating liquors of any character.

This is based upon the *prima facie* presumption which it is claimed is created by the state statute, that such parties intend to dispose of said liquors in violation of said law upon receiving the same.

The bill is anything but consistent.

As we gather it, however, the plaintiff bases its first cause of action upon the following contentions:

(a) That certain ancient treaties between the United States and certain Indian tribes obligated the United States and its successor, the State of Oklahoma, to maintain prohibition within certain parts of its domain. (Bill, pp. 4-6 and 7.)

(b) That the Enabling Act prohibits the introduction of intoxicating liquors into certain parts of the State as to which relief is sought in the Bill. (Bill, pp. 4 and 5.)

(c) That the Enabling Act delegates the power to regulate interstate commerce in intoxicating liquors between what was formerly the Indian Territory, and the balance of the world, to the State of Oklahoma.

The second contention is based upon the presumption created, it is claimed, by the statute, that persons who have paid the special tax required of liquor dealers intend to sell and dispose of such intoxicating liquors, upon their arrival within the state and delivery to the consignee; that in order to prevent disposition in violation of its laws the State may lawfully prohibit the interstate transportation of such intoxicating liquors; that it may use this Court as a means of so prohibiting said interstate shipments.

There is another and further contention which we assume is used rather as a basis of equitable relief than as a cause of action; it is that the plaintiff has a right to invoke the equitable jurisdiction of this Court to establish and maintain a monopoly in the traffic of intoxicating liquors and to suppress competition.

These defendants respectfully request a disposition of these questions upon the merits. If the law requires them (as we believe it does) to receive and transport interstate shipments of intoxicating liquors from places outside the State of Oklahoma to within the limits of the former Indian Territory and to persons who have paid the special revenue tax, they ask this Court to so adjudge.

If intoxicating liquors are not legitimate objects of commerce and these defendants may not be lawfully required to transport the same by interstate transportation to consignees within what was formerly Indian Territory, or may not be required to transport and deliver the same to consignees residing within the state who have paid the special tax required of liquor dealers, they respectfully ask this Court to so adjudge.

They desire to observe the law and to cease being harassed, on the one hand, by the State officers, and on the other by the persons desiring to ship or receive intoxicating liquors.

In order to present the contention of the defendants, we have stated what we believe to be the converse of the propositions above set out and will argue the same, presenting under each of the several headings what defendants insist are good and sufficient reasons why the relief should not be granted upon any one or all of the various contentions in said bill.

We shall present our objections to the bill under the following titles:

FIRST: The plaintiff is not obligated, by reason of any agreement between the United States and one or more Indian tribes, to maintain prohibition within any part of its domain.

SECOND: The Enabling Act does not prohibit the introduction of intoxicating liquors into any part of the State of Oklahoma; and, if it did so, it would be ineffectual to accomplish that purpose.

THIRD: The Enabling Act does not delegate the power to regulate interstate commerce of intoxicating liquors as to what was formerly the Indian Territory and Osage Nation to the State of Oklahoma.

FOURTH: The State of Oklahoma is not entitled to an injunction to enable it to monopolize the sale of intoxicating liquors within its limits, or to suppress competition.

FIFTH: That the regulation of interstate transportation of intoxicating liquors belongs exclusively to the Federal Government, and no Act of legislative authority of said State can impair or affect the right

of defendants, or either of them, to transport intoxicating liquors into the State of Oklahoma.

SIXTH: There is no Federal legislation prohibiting the introduction of intoxicating liquors into any part of the State of Oklahoma.

We will now proceed to the consideration of the matters involved in the order named:

**The plaintiff is not obligated by reason of any agreement between the United States and one or more Indian tribes to maintain prohibition within any part of its domain.**

The plaintiff in its bill makes reference to treaties between the Choctaw Nation and the United States, dated 1820, and another dated 1830, and another between the Choctaw and Chickasaw Nations and the United States dated 1866, and one between the Cherokees and the United States of the date 1866, showing that it was the purpose of the Government at that time to prevent, as far as possible, the introduction of intoxicating liquors among such tribes. It was also the purpose of the Government at that time to continue the communal or common ownership of Indian lands, and to prevent the introduction within the limits of the tribal domain of persons who were not members of the tribe.

The Attorney General had as well ask this Court to restore the communal holdings of the various tribes as to grant relief upon the basis of the treaties mentioned.

The Government has treated with each of the several tribes separately since that time. In these



agreements provision is made for the allotment in severalty of the tribal lands; the division of tribal funds and other tribal property; the passing of a fee simple title to each member of the tribe to his share of the tribal lands and the making of each allottee a citizen of the United States with all the rights, privileges and immunities of such.

One or two of these subsequent agreements contained a provision with reference to maintaining laws against the introduction, sale, barter or giving away of intoxicants.

The Seminole Agreement of December 16, 1897 (30 Stat. 567) contains the following:

"The United States agrees to maintain strict laws in the Seminole country against the introduction, sale, barter or giving away of intoxicants of any kind or quality."

Section 43 of the original Creek Agreement (31 Stat. 861) is as follows:

"The United States agrees to maintain strict laws in such Nation against the introduction, sale, barter or giving away of liquors or intoxicants of any kind whatsoever."

The Creek Nation no longer exists as a nation with a national domain.

The Seminole Nation no longer exists as a nation with a national domain.

Neither the Choctaw-Chickasaw Agreement of June 28, 1898 (30 Stat. 495) nor the Choctaw-Chickasaw Supplemental Agreement of July 1, 1902 (32 Stat. 641) contain any provision whatever with reference to the introduction or sale of intoxicating

liquors. Neither does the Creek Supplemental Agreement of June 30, 1902 (32 Stat. 500), nor does the Cherokee Agreement of July 1, 1902 (32 Stat. 716).

On the 3d day of March, 1893 (27 Stat. 645), Congress created a commission to negotiate with the Five Civilized Tribes for the allotment of their lands in severalty. (Sec. 15.) The purpose, as declared in Section 16 of the Act, was to enable the ultimate creation of a territory of the United States with a view to the admission of the same as a state into the Union.

It is provided in Section 15 of said Act that upon allotment the individuals to whom said allotment were to be made should be deemed in all respects citizens of the United States.

Congress legislated upon these subjects from time to time, looking to the early completion of the allotment of these lands among the various tribes.

On March 3, 1901, Congress conferred citizenship upon every Indian in Indian Territory (31 Stat. 347) in amending the General Allotment Act (24 Stat. 390) by inserting therein "and every Indian in the Indian Territory," so as to confer upon every Indian therein all of the rights, privileges and immunities of citizenship.

Prior to that time, to-wit, on June 28th, 1898 (30 Stat. 495) Congress had enacted a statute, entitled "An Act to protect the people of the Indian Territory and for other purposes," submitting certain agreements made by certain of the tribes for ratification, and prescribing a rule to apply in the absence of ratification by any one of the tribes.

Section 14 of this Act provides for the organization of municipalities, and said provision was kept

alive until statehood throughout the Five Civilized Tribes.

The lands of the Choctaws and Chickasaws have been allotted to the members thereof under the Choctaw-Chickasaw Supplemental Agreement (32 Stat. 641); the lands of the Creeks have been allotted under the original Creek Land Agreement (31 Stat. 861) and the Supplemental Creek Agreement (32 Stat. 500), and the lands of the Cherokees have been allotted under the Cherokee Agreement (32 Stat. 716).

It is a public fact which the Court may notice that the surplus of these lands under the various agreements are now being sold at public auction to the highest bidder by the Department of the Interior. Certificates of allotment and patents have been issued to nearly all of the allottees of these four tribes for the land allotted to the former members thereof. The allottees have become citizens of the United States.

Allotment has been completed in the Seminole Nation for many years. Allotment certificates have been issued generally. Whether patents have been issued or not we are unable to say.

Restrictions upon alienation of the allotted lands have ceased to exist by limitation under the provisions of the various agreements, and under the removal of the restrictions contained in the Act of April 21, 1904 (33 Stat. 204) and the removals made by the Secretary pursuant thereto, and by authority of the removal of restrictions under the Act of April 26th, 1906 (34 Stat. 137) and under the Act of May 27th, 1908 (35 Stat. 312). There is, therefore, in what was formerly Indian Territory more than three-

fourths of a million of people, at least 80 per cent of whom are neither of Indian blood nor have Indian rights.

A large part of the lands are held free from restrictions upon alienation. Hundreds of towns have been laid out under the provisions of the various agreements above set out, and under the provisions of the Act of May 31, 1901 (31 Stat. 221-237-238), and under the Act of March 3, 1903 (32 Stat. 982).

As early as the Act of June 28th, 1898 (Sec. 26), Congress prohibited the enforcement of any law of either of said tribes, either at law or in equity, in the courts of the United States, and at the same time (Sec. 28) abolished the courts of the various tribes.

Section 2 of the Oklahoma Enabling Act provides:

"that all male persons over the age of 21 years who are citizens of the United States, or who are members of any Indian tribe or nation in said Indian Territory in Oklahoma, and who have resided within the limits of said proposed state for at least six months next preceding the election, are hereby authorized to vote for and choose delegates to the constitutional convention of said proposed state."

This, together with the other provisions of the Enabling Act of the Oklahoma Constitution, makes every member of any Indian tribe or nation within the State of Oklahoma a citizen of the state, and therefore, as to those who had not theretofore become so, citizens of the United States.

*Boyd v. Thayer*, 143 U. S. 175.  
*Bolln v. Nebraska*, 176 U. S. 88.

It is a public fact that Honorable Charles Carter, a member of the Choctaw Tribe of Indians by blood, was elected a member of the Lower House of Congress; Honorable James S. Savenport, an intermarried citizen, was also elected a member of the Lower House, and Honorable Robert L. Owen, who is a citizen of the Cherokee Nation, was elected one of the senators from the State of Oklahoma, and Oklahoma was admitted into the Union upon an equal footing with the other states.

The provisions in the agreement above set out relating to maintaining laws against the manufacture, sale, etc., of intoxicating liquors within the domain of certain tribes were for no definite time and did not rise above the dignity of a law of the United States which might be repealed by Congress by direct legislation or by the enactment of legislation inconsistent therewith.

Perhaps because of the moral obligation felt by Congress, they required the State of Oklahoma to insert in its Constitution a provision prohibiting the manufacture, sale or furnishing of intoxicating liquors within certain parts of the state. They require the State to enforce this law in its own courts by penal provisions.

**There is no federal legislation prohibiting the introduction of intoxicating liquors into any part of the State of Oklahoma.**

For a history of the various agreements of the Indian tribes in what was formerly Indian Territory (now a part of the State of Oklahoma) and allotment

in severalty of their lands and making of such Indians citizens of the United States and of the State of Oklahoma with all of the rights, privileges and immunities of such, see discussion in this brief under the head

*The plaintiff is not obligated by any agreement between the United States and one or more Indian tribes to maintain prohibition within any part of its domain.*

We will treat what is there said as a part of this discussion in order to save repetition.

It is necessary to consider the conditions existing as discussed in said statement in order to determine the applicability of the Federal laws prohibiting the introduction of intoxicating liquors into the Indian country.

Section 2139 of the Revised Statutes as originally intended provides, in part, as follows:

"No ardent spirits shall be introduced under any pretense into the Indian country. Every person, except an Indian, who sells, exchanges, gives, barter or disposes of any spirituous liquors or wines to an Indian in charge of an Indian superintendent or agent, or introduces or attempts to introduce any spirituous liquors or wine into the Indian country, shall be punishable by imprisonment for not more than two years and by a fine of not more than \$300.00."

By the provisions of the Act of July 23d, 1892 (27 Stat. 260), Section 2139 was amended and re-enacted. The amendment extended the provision so as to include ale, beer and intoxicating liquors of every kind. It was also extended so as to include every person who violated the provisions of the law.

Under Section 2139 an Indian in an Indian country was excepted therefrom.

Section 2139 as amended by the Act of 1892 also prescribed the details of prosecution for the violation of said Act.

On the 30th day of January, 1897, the President approved an Act entitled "An Act to prohibit the sale of intoxicating drinks to Indians, providing penalties therefor, and for other purposes." (29 Stat. 506-7.)

This Act is as follows:

"That any person who shall sell, give away, dispose of, exchange or barter any malt, spirituous or vinous liquor, including beer, ale and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label or brand, which produces intoxication, to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian a ward of the Government under charge of any Indian superintendent or agent, or any Indian, including mixed blood, over whom the Government, through its departments, exercises guardianship, and any person who shall introduce or attempt to introduce any malt, spirituous or vinous liquor, including beer, ale and wine, or any ardent or intoxicating liquor of any kind whatsoever, into the Indian country, which term shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be punished by imprisonment for not less than sixty days and by a fine of not less than one hundred dollars for the first offense, and not less than two hundred dollars for each offense thereafter; *Provided, however,* that the person convicted shall be committed until fine

and costs are paid. But it shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the War Department, or any officer duly authorized thereunto by the War Department."

This Act seems to have been passed in view of the fact that it was no longer either possible or desirable to attempt to prohibit the introduction of intoxicating liquors into Indian reservations which had been allotted in severalty to the members of the tribes, but it undertook to substitute for such prohibition the prohibition against carrying intoxicating liquors upon the individual allotment of the allottee while the title is held in trust by the Government, or the lands are inalienable.

This is a recognition of the fact that where conditions such as those in Indian Territory existed that Section 2139 as originally enacted or as amended in 1892 has no application.

There is no contention that any of the defendants have transported by interstate transportation and delivered intoxicating liquors upon any Indian allotment, title to which is held by the United States or which is inalienable.

The term "Indian country" does not embrace any body of territory in which, at the time in question, the Indian title has been extinguished and over which the jurisdiction of the State has been extended.

Speaking with reference to this subject, this court in the case of *Dick v. United States* (208 U. S. 340-352) says:



"Section 2139, as amended and re-enacted in 1892, makes it an offense against the United States for anyone to introduce intoxicating liquors into the Indian country, and the offense charged against Dick was the introduction by him of whisky into that country on the 15th day of March, 1905. The transaction, out of which the present prosecution arose, occurred, as we have seen, within the village of Culdesac, a municipal organization existing under and by virtue of the laws of Idaho, and the parties involved in it were Dick and Te-We-Talkt, who were at that time allottees in severalty and holders of trust patents, and therefore, according to the decision in *Matter of Heff*, 197 U. S. 488, citizens of the United States. If this case depended *alone* upon the Federal liquor statute forbidding the introduction of intoxicating drinks into the Indian country we should feel obliged to adjudge that the trial court erred in not directing a verdict for the defendant, for that statute, when enacted, did not intend by the words 'Indian country' to embrace any body of territory in which, at the time, the Indian title had been extinguished and over which and over the inhabitants of which (as was the case of Culdesac) the jurisdiction of the State, for all purposes of government, was full and complete. *Bates v. Clark*, 95 U. S. 204; *Ex parte Crow Dog*, 109 U. S. 561."

In the case of *Draper v. The United States*, 164 U. S. 240-2, this Court stated the law with reference to the authority of the United States over Indians located within the domain of a state in the following language:

"In *United States v. McBratney*, 104 U. S. 621, this court held that where a state was admitted into the Union, and the Enabling Act contained no exclusion of jurisdiction as to crimes committed on an Indian reservation by

others than Indians or against Indians, the state courts were vested with jurisdiction to try and punish such crimes. The court there said:

"The Act of March 3, 1875, c. 139 (the Enabling Act), which provided for the admission of the State of Colorado, necessarily repeals the provisions of any prior statutes, or of any existing treaty, which are clearly inconsistent therewith. *The Cherokee Tobacco*, 11 Wall. 616. Whenever, upon the admission of a state into the Union, Congress has intended to except out of it an Indian reservation, or the sole and exclusive jurisdiction over that reservation, it has done so by express words.'"

In addition to the above quotation from the case of *United States v. McBratney* (104 U. S. 623) we quote as follows therefrom:

"But the Act of Congress of March 3, 1875, c. 139, for the admission of Colorado into the Union, authorized the inhabitants of the territory 'to form for themselves out of said territory a state government, with the name of the State of Colorado, which state, when formed, shall be admitted into the Union upon an equal footing with the original states in all respects whatsoever'; and the Act contains no exception of the Ute Reservation or of jurisdiction over it. 18 Stat., pt. 3, p. 474. The provision of Section 1 of the subsequent Act of June 26, 1876, c. 147 (19 Stat. 61), that upon the admission of the State of Colorado into the Union 'the laws of the United States not locally inapplicable shall have the same force and effect within the state as elsewhere within the United States,' does not create any such exception. Such a provision has a less extensive effect within the limits of one of the states of the Union than in one of the territories of which the United States have sole and exclusive jurisdiction."

Under the above decisions the term "Indian country" does not embrace any body of territory in which at the time the Indian title had been extinguished. The Indian title has been extinguished as to practically all of what was formerly the Indian Territory; therefore it is not Indian country within the purview of the decisions of this Court.

Congress did not reserve jurisdiction over any part of the lands occupied by any of the Indians in any part of the State of Oklahoma in the Enabling Act.

It is true that the Enabling Act provided that nothing contained in the Constitution of the State

"shall be construed to limit or impair the rights of persons or property pertaining to the Indians of such territory (so long as said right shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any laws or regulations respecting such Indians, their lands, property, or their rights by treaties, agreements, law or otherwise, which it would have been competent to make if this Act had never passed." (34 Stat. 267.)

Paragraph 3 of Section 3 of the Enabling Act also contains the following provision:

"That the people inhabiting said proposed state do decree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe or nation; and that until the title to any such public land shall have been extinguished by the United States the same shall be and remain subject to the jurisdiction, disposal and control of the United States."

Congress reserves the right to legislate by the paragraph first quoted, but it does not undertake to continue in force any legislation other than which is of general character and in force throughout the states of the Union.

The last paragraph of Section 21 of the Enabling Act contains the following:

"The laws of the United States not locally inapplicable shall have the same force and effect within said state as elsewhere within the United States."

It will also be observed that in the quotation from Paragraph 3 of Section 3 of the Enabling Act, *supra*, that the people are simply required to disclaim any right in and to "all lands lying within said limits owned or held by an Indian tribe or nation," not an individual Indian, and that public lands shall be and remain "subject to the jurisdiction, disposal and control of the United States."

A sharp distinction is here drawn in a reservation of the *jurisdiction* and *control* by the United States over its *public lands*, but *only* a *disclaimer* is required as to the title to tribal lands. Certainly, therefore, Congress did not except out of the limits of the State of Oklahoma any tract or parcel of land of any character as an Indian reservation and reserve jurisdiction and control thereof.

It is therefore respectfully submitted that there is no Indian country within the State of Oklahoma and that the Government has not reserved the jurisdiction and control over any tract or body of land within the limits of the state as an Indian reservation.

There is therefore no law of the United States

which undertakes to prohibit the introduction into any part of the State of Oklahoma of intoxicating liquors.

**The enabling act does not prohibit the introduction of intoxicating liquors into any part of the State of Oklahoma; and if it did so it would be ineffectual to accomplish that purpose.**

A careful examination of the Enabling Act discloses that Congress did not undertake to legislate with reference to the introduction of intoxicating liquors into any part of the State of Oklahoma.

Paragraph 3 of the Enabling Act (34 Stat., p. 267), containing the sole provision relating to the matter of the regulation of the disposition of intoxicating liquors in the State of Oklahoma, is in part as follows:

"And said convention shall provide in said Constitution \* \* \* Second: That the manufacture, sale, barter, giving away or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within those parts of said state, and now known as Indian Territory, the Osage Nation, and within any other parts of said state which existed as Indian reservations on the 1st day of January, 1906, is prohibited for a period of twenty-one years from the date of the admission of said state into the Union, and thereafter until the people of said state shall otherwise provide by amendment of said Constitution and proper state legislation."

Then follow certain other provisions relating to the same subject.

This language is clear, explicit and free from doubt.

Congress does not undertake to legislate, but to require that the Constitution of the State of Oklahoma shall contain certain provisions prohibiting the "manufacture, sale, barter, giving away or otherwise furnishing" (with certain exceptions) of intoxicating liquors in certain parts of the state.

The State discharged that obligation by including in its Constitution the provision which Congress required it to include. It would seem, therefore, that there is no ground whatever for contending that the Enabling Act in any sense prohibits the introduction of intoxicating liquors into any part of the State of Oklahoma.

**The Enabling Act does not delegate the power to regulate interstate commerce of intoxicating liquors as to what was formerly the Indian Territory and Osage Nation, to the State of Oklahoma.**

It is specifically charged in the plaintiff's bill, as a ground for relief that the power to regulate interstate commerce in intoxicating liquors was thereby (by the Enabling Act) surrendered to the State of Oklahoma as to such portions of said state.

Upon what provision of the Enabling Act the contention that Congress had surrendered to the State the control of the transportation of intoxicating liquors as between that part of the State of Oklahoma which formerly consisted of Indian Territory and

other states, and foreign countries, is based is not disclosed in the bill.

Certainly it should not be concluded that Congress intended to abrogate national control of interstate commerce as between a state, or any part thereof, and other states unless the language used is such as to be susceptible of no other construction than that such was the purpose. No language is pointed to in the Enabling Act as accomplishing this result.

It is merely asserted that such result is accomplished by the Enabling Act.

We therefore respectfully insist that there is no language whatever used in the Enabling Act that could be by any legitimate standard of construction converted into a departure by Congress from the rule that has exclusively prevailed from the formation of the Government.

And undoubtedly this is the interpretation given to the Enabling Act and the Oklahoma Dispensary Prohibition Law by the Supreme Court of the State of Oklahoma.

In the case of *The State v. Eighteen Casks of Beer* (104 Pacific 1093) the Supreme Court of the state, after a most careful review of the law, placed Oklahoma upon the same footing and in the same relation to the interstate transportation of intoxicating liquors as other states occupy.

It was there distinctly held that the state law did not attach until immediately after the consummation of the delivery by the carrier to the consignee.

In the case of the *St. Louis & San Francisco Railroad Company v. State* (109 Pacific 230), 107 casks of beer were ordered by the Supreme Court to be returned to the consignee so that it could make the

delivery which it is required to make under its interstate transportation contract. These 107 casks were seized at Tulsa, Oklahoma, within what was formerly the Indian Territory.

The case of *The Rochester Brewing Company v. The State* (109 Pacific 298) involved an appeal from the condemnation of a car of beer, likewise seized at Tulsa, Oklahoma, in what was formerly Indian Territory. The action of the trial court was reversed.

The case of *McCord v. The State* (101 Pacific 280) involved a conviction for transporting an interstate shipment of intoxicating liquors which the State contended had been delivered to the consignee within the purview of the Wilson Act, and which the defendant contended had not arrived at destination and would not arrive until they reached his residence, the same being the final resting place.

The Court of Criminal Appeals of the state in the last mentioned case held that under the Constitution of the United States McCord had a right to transport an interstate shipment of intoxicating liquors from the depot to his residence, and that the interstate journey did not terminate until such transportation was completed.

The same conclusion is reached by the Criminal Court of Appeals in the case of *High v. The State* (101 Pacific 115) and *Hudson v. The State* (101 Pacific 275).

This ruling has been repeated so often by the Criminal Court of Appeals that it would hardly serve a useful purpose to refer to all of its decisions.

It will be observed from an examination of the constitutional provision adopted by the State of Oklahoma that it is enforced throughout the state, and not



merely in the Indian Territory, the Osage Reservation and what constituted Indian reservations June 1st, 1906.

It is not even claimed that any authority was delegated as to Oklahoma Territory proper; yet the statute and constitutional provision covers alike that part of the state which was formerly Indian Territory, the Osage Nation and Indian reservations on June 1st, 1906, and that which was not, showing that nobody connected with the making of the Constitution or the statute ever had the remotest suspicion that any officer of the state would ever claim that the State of Oklahoma had any greater authority in dealing with interstate commerce than has any other state.

In addition, we respectfully submit that Congress cannot delegate the authority to regulate commerce to any one of the states. The delegation to the State of Oklahoma of authority to regulate interstate commerce as to any part of its domain would necessarily delegate to it the authority to regulate commerce of like character between every state of the Union and such parts of said state, the result of which would be to regulate the commerce of all other states as well as that of Oklahoma. No such result was ever contemplated.

From time immemorial Congress has, when seeking to prohibit the introduction into an Indian reservation of intoxicating liquors, prohibited the "introduction into," etc. In the case instituted in the District Court of Carter County by the Attorney General he insisted that the word "furnish" was used as a substitute for and meant the same as "introduction into."

The opinion of Russell, district judge, in disposing of this contention is such an able refutation of the Attorney General's position here that we quote therefrom as follows:

"But the Attorney General strenuously insists that the words 'or otherwise furnish' were intended to mean, and in his opinion do mean, 'introducing.' And in support of this theory that the words quoted do mean 'introducing' and its interchangeable term, 'introduction,' he refers us to a Vermont statute which defines the word 'furnish' to mean introduction or introducing.

Such a contention involves the anomaly of making the settlement of solemn governmental problems hang upon a mere construction or play upon words that seeks to invest them with a meaning at variance with their general acceptance and with the heretofore recognized policy of Congress not to prohibit commerce between the states.

The term 'furnish' seems to have furnished its own meaning until Vermont conceived the necessity of changing what all lexicographers understood it to mean, and the fact that the statute was necessary to give the term a radically different meaning might be accepted as an admission that the lexicographers are right, but that in Vermont alone it should have an opposite meaning.

In our opinion, the use of the phrase 'or otherwise furnishing' is the doing of an act or acts in evasion of a direct gift, barter or sale, and the doing of such evasive acts in a way or manner that would constitute in law a barter, gift or sale; the employment of any pretext or subterfuge which the law would characterize as an attempt to cover up the purpose of the offender; the use of surreptitious methods that would, in the belief of the offender, constitute a state of facts that would circumvent the ordinary meaning of the words 'gift, barter or sale' and thereby 'furnish' an escape.

Unless the statutory definition of the word 'furnish' given by the Vermont Legislature shall be accepted by the courts of all the other states as an 'introduction' to a new meaning to be given to that term, we must be permitted, in all deference to the eminent learning of the Honorable Attorney General and the dignity of his official station, to say that we are unalterably opposed to accepting the meaning furnished by the Vermont statute and indorsed by him, believing, as we do, that such an interpretation of that term is an absolute contradiction of the meaning of the word as generally understood and of the meaning intended to be conveyed by its use in the connection under discussion.

Congress in its treaties with all of the Indian tribes, while guaranteeing to maintain strict laws upon the subject of intoxicants, uses the word 'introduction,' and has certainly thereby demonstrated that it has always thoroughly understood the meaning attached to that word. Is it reasonable to suppose, then, that when it came to enact so important a piece of legislation as an Enabling Act, bringing a new state into the Union, that it intended to depart from its policy (whether founded in lack of power or otherwise) not to prohibit commerce between the states by a prohibition against the introduction of liquor into this state and yet cast aside the word it had always employed to convey such a meaning and choose one which in its general acceptance had no such meaning?

The reason for its failure to so use the word in this instance is obvious enough—that when dealing with the Indian tribes Congress recognized its right to prohibit commerce, hence used the word 'introduction,' but when dealing with a state the right to prohibit commerce was not recognized, though the right to regulate was, hence it imposed the obligation upon the State which it knew was clearly within its power to impose, and that only, and which the State, in accepting, had the right to enact into law and to enforce.

It is well understood that a state cannot prohibit commerce with other states, and yet to give the word 'furnish' the interpretation insisted upon by the Attorney General is an attempt to put the State in the false position of trying to do indirectly what it is prohibited from doing directly, that is, prevent the shipment of liquors into the state—in other words, prohibit commerce with other states.

For a great number of years the Indian has been treated as a ward of the Nation, and the United States has undertaken to maintain strict laws against not only the introduction of liquor, but the use of it in any way, except for medical purposes, among them, so long as the relation of dependency existed. So long as they remained subject to the laws of the United States and their own tribal government such a policy upon the part of the General Government met with no opposition by the states, possibly for the reason that the states recognized that the Indian was in a condition of isolation, freed from the obligations of state citizenship, hence one central head should control their affairs. Under the then existing conditions it is easy to understand why certain prohibitory legislation should be enacted in their relation to the outside world, and so long as the same condition existed the same reason for Government protection existed.

Congress has made the Indian a citizen of the United States, and this makes him a citizen of the state wherein he resides, and he becomes subject to its laws, both civil and criminal. (Slaughter cases, 16 Wallace 36; Heff case, 197 U. S. 497, *et seq.*)

Individual titles have taken the place of tribal titles to land, and in the sporadic exceptions to this condition the Federal statutes prohibiting the introduction of liquor apply and the United States courts have the duty imposed upon them to enforce such laws, and with which the state courts have no connection, for the reason, if no other, that the state has no such laws to be violated.

Mr. Justice Brewer, in the Heff case, decided that when citizenship attaches the Government is under no constitutional obligation to continue its relationship to the Indian and can so abandon that relation as to make the Indian assume and be subject to all the privileges and burdens of one *sui juris*.

It is as a citizen that the state courts can deal with him, and, being a citizen, the State will exercise the same jealous care in the protection of him and of his rights as such as is due to every other citizen within her jurisdiction. The state courts are open to right his wrongs, and her laws are as much for him as can possibly be claimed for another. In the forum of the law Oklahoma recognizes no racial distinction. Equality before the law and justice from the law are the rights of the Indian citizen of our state, and whether or not these rights existed before a change in the form of government, they certainly exist now.

We repeat that the Enabling Act does not prohibit the introduction of liquors, either by express terms or by implication, and we do not doubt that the omission by Congress was intentional in deference to the prerogatives of an incoming sovereignty and its purpose not to exercise a power not theretofore asserted. Therefore, it is our opinion that Oklahoma, in accepting the terms and conditions of that Act, did not agree upon any condition to prohibit the introduction of liquors, as complained of in the petition herein, and had this State understood that such was the agreement, and her courts would sanction it, the United States courts would in fact do what the Honorable Attorney General is now seeking to do.

Hence we say that Congress had no such purpose in view; that the Constitutional Convention gave no intimation in the Constitution that such a purpose was agreed to; that the approval of the Constitution by the President of the United States and his Attorney General is an-

other evidence that such an agreement was not contemplated, and that the Legislature of Oklahoma has adjourned without an intimation from it that such an agreement was contemplated by the Enabling Act or by the makers of our Constitution.

We have carefully scrutinized the Enabling Act, the Constitution of Oklahoma and what is known as the Billups Bill, to say nothing of every law affecting the Indian, to find warrant for the opinion that Oklahoma was either morally or legally obligated to even make the attempt to prohibit the introduction of liquor, much less the authority and power to do so, and we find ourselves driven to the conclusion that for this court to grant the injunction prayed for would be wrong and so lacking in judicial effect and credence as to make it appear that the courts of this state were grasping for the exercise of greater authority than was ever contemplated by the grant of federal power, and to this we will not lend our consent."

There is no merit whatever in the contention that the Enabling Act delegates to the State power to regulate interstate commerce.

**The State of Oklahoma is not entitled to an injunction to enable it to monopolize the sale of intoxicating liquors within its limits, or to suppress competition.**

The contention that the plaintiff is entitled to an injunction in order to maintain a monopoly of the traffic in intoxicating liquors within the state and to suppress competition is stated in Plaintiff's Bill (p. 96) in the following language:

"That the State is pecuniarily interested in the sale of said liquors and irreparably injured by said importation by defendants to the persons named in said list who had paid the special tax required by the United States of liquor dealers, in that the said importation to the said persons named on said list, being for the purpose of resale of such importations in said state, operates to the injury to the exclusive right to the sale of intoxicating liquors in said state, claimed and exercised by the State of Oklahoma."

In other words, it is insisted that the State of Oklahoma, by its laws, prohibits the sale within the limits of the state of intoxicating liquors to individuals in order that it may have a monopoly of the selling. That, as appears from the Dispensary Prohibition Law, on pages 69 to 73, inclusive, of the Bill, the State has penalized competition.

It is provided that persons selling or having in their possession for sale, in competition with the State, intoxicating liquors, shall be adjudged guilty of a misdemeanor and punished by either fine or imprisonment, or both, at the discretion of the trial judge.

Not having been able, through the enforcement of the criminal laws of the state, to suppress competition, it asks this Court to aid it in monopolizing the whisky traffic by prohibiting interstate transportation to its competitors of intoxicating liquors, which may, upon their arrival, be used in competition with the State.

The Court is asked, therefore, by the State of Oklahoma to assist it in the completion and maintenance of a monopoly in the traffic of intoxicating liquors.

It is respectfully insisted that such relief would be violative of the Sherman Anti-Trust Act (26 Stat. 209); of the Oklahoma Anti-Trust Act (Compiled Laws 1909, Chapter 113, p. 1766), and the use of the injunctive powers of this Court for the accomplishment of a purpose that is neither lawful nor morally right.

**That the regulation of interstate transportation of intoxicating liquors belongs exclusively to the Federal Government, and no act of the legislative authority of said state can impair or affect the right of defendants, or either of them, to transport intoxicating liquors into the State of Oklahoma.**

By the provisions of Section 5258 of the Revised Statutes of the United States, Congress has enacted that railway companies may carry persons and property on their way from one state to another. (See Appendix.) The Act to Regulate Commerce covers the entire field of interstate commerce, and leaves nothing for state control. (35 Stat. 60.)

By the Wilson Act, Congress has subjected intoxicating liquors, upon their arrival within the state and delivery to the consignee, to state laws. (26 Stat. 313. Also in Appendix hereto.)

By Sections 238, 239 and 240 of the Penal Code (35 Stat. 1136-1137, also in Appendix) Congress has prescribed elaborate regulations for the interstate transportation of intoxicating liquors. Congress, in



regulating instead of prohibiting interstate transportation of intoxicating liquors, recognizes that they are legitimate subjects of interstate commerce.

It would seem that Congress has, therefore, legislated upon every feature of the matter of transportation of intoxicating liquors. It has not only legislated generally in authorizing railroads to carry passengers and property from one state to another and generally controlling interstate transportation of all commodities from receipt until final delivery, but it has specifically prescribed the identical method that shall be pursued in the transportation and delivery of intoxicating liquors. There is, therefore, no room for state action in connection with such interstate transportation or delivery, and the right of a state to deal with such intoxicating liquors accrues only after the arrival within the state and delivery therein to the consignee; and the Supreme Court of the State of Oklahoma, construing its Constitution and the Oklahoma Dispensary Prohibition Law here involved, has specifically held that the State has no authority or control over the interstate transportation of intoxicating liquors until after their arrival within the state and their delivery to the consignee.

This rule has been declared in the following cases:

*State v. Eighteen Casks of Beer*, 104 Pac. 1093;

*St. L. & S. F. R. R. Co. v. State*, 109 Pac. 230;

*Rochester Brew. Co. v. State*, 109 Pac. 298.

And by the Court of Criminal Appeals of the State of Oklahoma in the cases of

*McCord v. The State*, 101 Pac. 280;  
*High et al v. The State*, 101 Pac. 118;  
*Hudson v. The State*, 171 Pac. 275,  
 and other cases too numerous to mention.

But it is insisted that because of the *prima facie* presumption that parties named in plaintiff's bill, who have paid the special liquor dealers' tax required by the United States, intend to dispose of said liquors in violation of the Oklahoma Dispensary Prohibition Law, that defendants may not lawfully transport such liquors by interstate transportation from places outside of the State of Oklahoma to consignees within the state.

It does seem to us that as such contention has been so repeatedly repudiated by this Court it is hardly necessary to do more than to merely call attention to some of its decisions.

In the case of *Bowman v. Chicago & N. W. R. R. Co.*, 125 U. S. 465, the defense interposed to a \$10,000 damage suit for failure to receive and transport intoxicating liquors from Chicago to Marshalltown, Iowa, was that the statute of Iowa prohibited such transportation.

In denying this defense this Court used the following language, quoting from *Hull v. Decuin*, 95 U. S. 485-488, and applying the general rule to intoxicating liquors:

"If each state was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unneces-

sary hardship. Each state could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay, more, it could prescribe rules by which the carrier must be governed within the state, in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules and on the other another. Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself or comfort to those employing him if on one side of a state line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammelled by state lines, has been invested with the exclusive legislative power of determining what such regulations shall be." (486.)

In the case of *Leisy v. Hardin*, 135 U. S. 100-110, Chief Justice Fuller for this Court uses the following language:

"that ardent spirits, distilled liquors, ale and beer are subjects of exchange, barter and traffic like any other commodity in which the right of traffic exists, and are so recognized by the usages of the commercial world, the laws of Congress and the decisions of the courts, is not denied."

In the case of *Rhodes v. Iowa*, 170 U. S. 412, decided long after the passage of the Wilson Act, this Court definitely determined that the right to transport intoxicating liquors from one state to another could not be affected by state statute.

We quote from the opinion in that case as follows:

"The sole question presented for consideration is whether the statute of the State of Iowa can be held to apply to the box in question whilst it was in transit from its point of shipment, Dallas, Illinois, to its delivery to the consignee at the point to which it was consigned. *That is to say, whether the law of the State of Iowa can be made to apply to a shipment from the State of Illinois, before the arrival and delivery of the merchandise, without causing the Iowa law to be repugnant to the Constitution of the United States.*

In *Bowman v. Chicago & Northwestern Railway*, (1888) 125 U. S. 465, this court was called upon to determine the validity of a statute of the State of Iowa, which it was asserted was repugnant to the third clause of Section 8 of Article I of the Constitution of the United States, because its provisions amounted to a regulation of interstate commerce. The facts upon which the controversy then presented arose were briefly as follows: Kegs of beer were offered in the State of Illinois to a common carrier operating a line of railway in the States of Illinois and Iowa. The beer was consigned to a point in Iowa, and the carrier refused to receive it, on the ground that the statute of Iowa made it unlawful to bring intoxicating liquors within the limits of that state, except when accompanied with a specified certificate, which the Iowa law provided should be granted under particular and exceptional conditions. The one by whom beer was tendered to the carrier in the State of Illinois thereupon sued the railroad company for the damages claimed to have arisen from its refusal to receive and carry the merchandise. The railway company defended on the ground that it was justified in its refusal because of the provision of the Iowa statute. This, on the other hand, was asserted not to be an adequate defense, be-

cause it was claimed that the Iowa statute was wholly void, as it constituted a regulation of interstate commerce. The sole issue arising therefrom was whether the Iowa law protected the refusing carrier, and thus involved determining whether the statute of the state was repugnant to the Constitution of the United States. After great consideration it was held that the law of the State of Iowa, insofar as it affected interstate commerce, was repugnant to the interstate clause of the Constitution and was void. It was decided that the transportation of merchandise from one state into and across another was interstate commerce, and was protected from the operation of state laws from the moment of shipment, whilst in transit and up to the ending of the journey by the delivery of the goods to the consignee at the place to which they were consigned. The court in the course of its opinion adverted to the question whether goods so shipped continued to be protected by the interstate commerce clause after their delivery to the consignee and up to and including their sale in the original package, by the one to whom they had been delivered, but did not decide the question, as it was not essential to do so; referring to the subject, however, the court said (pp. 499-500):

*'It might be very convenient and useful in the execution of the policy of prohibition within the state to extend the powers of the state beyond its territorial limits. But such extra territorial powers cannot be assumed upon such an implication. On the contrary, the nature of the case contradicts their existence. For if they belong to one state, they belong to all, and cannot be exercised severally and independently. The attempt would necessarily produce that conflict and confusion which it was the very purpose of the Constitution by its delegations of national power to prevent.*

*'It is easier to think that the right of importation from abroad, and of transportation*

from one state to another, includes, by necessary implication, the right of the importer to sell unbroken packages at the place where the transit terminates, for the very purpose and motive of that branch of commerce which consists in transportation is that other and consequent acts of commerce which consists in the sale and exchange of the commodities transported. Such, indeed, was the point decided in the case of *Brown v. Maryland*, 12 Wheat. 419, as to foreign commerce with the express statements in the opinion of Chief Justice Marshall that the conclusion would be the same in a case of commerce among the states.

*'But it is not necessary now to express any opinion upon the point, because that question does not arise in the present case. The precise line which divides the transaction, so far as it belongs to foreign or interstate commerce, from the internal and domestic commerce of the state, we are not now called upon to delineate. It is enough to say that the power to regulate or forbid the sale of a commodity after it has been brought into the state, does not carry with it the right and power to prevent its introduction by transportation from another state. (416.)*

\* \* \* \* \*

'If it had been the intention of the Act of Congress to provide for the stoppage at the state line of every interstate commerce contract relating to the merchandise named in the Act, such purpose would have been easy of expression. The fact that such power was not conveyed and that, on the contrary, the language of the statute relates to the receipt of the goods "into any state or territory for use, consumption, sale or storage therein," negatives the correctness of the interpretation holding that the receipt into any state or territory for the purpose named could never take place. Light is thrown upon the purpose and spirit of the Act by another consideration. The *Bowman* case was decided in 1888; the

*Leisy Case v. Hardin* was announced in April, 1890; the Act under consideration was approved August 8, 1890. Considering these dates, it is reasonable to infer that the provisions of the Act were intended by Congress to cause the legislative authority of the respective states to attach to intoxicating liquors coming into the states by an interstate shipment, only after the consumption of the shipment, but before the sale of the merchandise, that is, that the one receiving merchandise of the character named should, whilst retaining the full right to use the same, no longer enjoy the right to sell free from the restrictions as to sale created by state legislation, a right which the decision in *Leisy v. Hardin* had just previously declared to exist. (423.)

\* \* \* \* \*

'And it was doubtless this construction which caused the court to observe in the opinion in *In Re Rahrer* (140 U. S. 545, 552) that the Act of Congress "divests them (objects of interstate commerce shipment) of that character at an earlier period of time than would otherwise be the case." We think that interpreting the the statute by the light of all its provisions, it was not intended to and did not cause the power of the state to attach to an interstate commerce shipment, whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee, and, of course, this conclusion renders it entirely unnecessary to consider whether if the act of Congress had submitted the right to make interstate commerce shipments to state control it would be repugnant to the Constitution.

'It follows, from this conclusion, that as the Act for which the plaintiff in error was convicted, and which consisted in moving the goods from the platform to the freight warehouse, was a part of the interstate commerce transportation, and was done before the law of Iowa could con-

stitutionally attach to the goods, the conviction was erroneous, and the judgment below is, therefore, reversed.' " (426.) (All italics ours.)

It is not necessary to further review the decisions of this Court. We, however, call attention to the following cases:

*Vance v. Vandercook*, 170 U. S. 438.  
*Amer. Express Co. v. Iowa*, 196 U. S. 133.  
*Heymann v. So. Ry. Co.*, 203 U. S. 275.  
*Adams Express Co. v. Ky.*, 206 U. S. 129.  
*Adams Express Co. v. Commonwealth of Ky.*, 214 U. S. 218.

The Court's attention is also called to the following decisions from other courts, discussing the question here involved:

*L. & N. R. R. Co. v. F. W. Cook Brew. Co.*,  
 172 Fed. 117.  
*Cincinnati, N. O. & T. P. R. R. Co. v. Commonwealth*, 104 S. W. 394.  
*United States v. U. S. Express Company*,  
 180 Fed. 1006.



The defendants most respectfully insist that the plaintiff is not entitled to the relief prayed for, and that the demurrers to the bill should be sustained and the proceeding dismissed.

Respectfully submitted,

S. T. BLEDSOE.

*For Above Named Defendants.*

*Of Counsel:*

GARDINER LATHROP,  
ROBERT DUNLAP,  
J. R. COTTINGHAM,  
C. O. BLAKE,  
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C. E. WARNER.

# I.

## APPENDIX.

"SEC. 5258. Every railroad company in the United States whose road is operated by steam, its successors and assigns, is hereby authorized to carry upon and over its road, boats, bridges and ferries all passengers, troops, Government supplies, mails, freight and property on their way from any state to another state, and to receive compensation therefor, and to connect with roads of other states, so as to form continuous lines for the transportation of the same to the place of destination. \* \* \*"

### WILSON ACT.

What is known as the "Wilson Act," approved August 8, 1890 (26 Stat. 313), is as follows:

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all fermented, distilled or other intoxicating liquors or liquids transported into any state or territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such state or territory be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such state or territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."*

## II.

### PENAL CODE.

Sections 238, 239 and 240 of the Penal Code (35 Stat. 1136-37) are as follows:

"SEC. 238. Any officer, agent or employe of any railroad company, express company or other common carrier who shall knowingly deliver or cause to be delivered to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the *bona fide* consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, fermented or other intoxicating liquor of any kind which has been shipped from one state, territory or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof, into any other state, territory or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof, or from any foreign country into any state, territory or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof, shall be fined not more than five thousand dollars or imprisoned not more than two years, or both.

SEC. 239. Any railroad company, express company or other common carrier, or any other person, who, in connection with the transportation of any spirituous, vinous, malted, fermented or other intoxicating liquor of any kind from one state, territory or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof, into any other state, territory or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof, or from any foreign country into any state, territory or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof, shall collect the purchase price, or any part thereof, before, on or

### III.

after delivery, from the consignee, or from any other person, or shall in any manner act as the agent of the buyer or seller of any such liquor for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined not more than five thousand dollars.

SEC. 240. Whoever shall knowingly ship, or cause to be shipped, from any state, territory or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof, into any other state, territory or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof, or from any foreign country into any state, territory or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof, any package of or package containing any spirituous, vinous, malted, fermented or other intoxicating liquor of any kind unless such package be so labeled on the outside cover to plainly show the name of the consignee, the nature of its contents and the quantity contained therein, shall be fined not more than five thousand dollars, and such liquor shall be forfeited to the United States and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law."

STATE OF OKLAHOMA, ON THE RELATION OF  
WEST, ATTORNEY GENERAL, *v.* GULF, COLO-  
RADO & SANTA FE RAILWAY COMPANY.

BILL IN EQUITY.

No. 14, Original. Argued February 23, 24, 1911.—Decided April 3, 1911.

*Oklahoma v. Atchison, Topeka & Santa Fe Ry. Co.*, ante, p. 277, followed to effect that a State cannot invoke the original jurisdiction of this court by suit against individual defendants on its behalf where the primary purpose is to protect citizens generally against violation of its own laws by the defendants.

A State cannot invoke the original jurisdiction of this court to enforce a judgment rendered in its courts for a violation of its penal or criminal laws, *Wisconsin v. Pelican Insurance Company*, 127 U. S. 265, or to enforce a penal statute.

A suit by a State, to enjoin carriers from conveying intoxicating liquors into its territory or an Indian reservation therein, is one to enforce by injunction regulations prescribed by the State for violations of its own penal statutes and is not within the original jurisdiction of this court; and so held as to a suit brought by the State of Oklahoma to enjoin railway and express companies from introducing liquor into its territory.

THE facts, which involve the construction of the provisions of the Constitution of the United States conferring original jurisdiction on this court in controversies in which a State is a party, are stated in the opinion.

*Mr. Charles West*, Attorney General of the State of Oklahoma, for complainant.

*Mr. Lawrence Maxwell* and *Mr. S. T. Bledsoe*, with whom *Mr. Martin L. Clardy*, *Mr. William W. Green*, *Mr. Charles W. Stockton*, *Mr. T. B. Harrison, Jr.*, and *Mr. Joseph S. Graydon* were on the brief, for defendants.

MR. JUSTICE HARLAN delivered the opinion of the court.

The State of Oklahoma, by the present suit, invokes the original jurisdiction of this court for its protection against certain acts, alleged to have been done or threatened to be done by the respective defendants in derogation of its rights as a State. The case has been heard upon demurrers filed by the several defendants. Some of the demurrers proceed upon the specific ground that this court cannot take jurisdiction of the cause, while others add the general ground that the bill does not show any facts entitling the State to the relief sought by the bill.

As the case involves some questions of a grave character, it is proper to set forth with some fullness the grounds upon which the State bases its claim for relief.

It is alleged in the bill that the defendant companies are corporations of States other than Oklahoma, except that the American Express Company is a partnership, composed of individuals who are citizens and residents of New York; that what were formerly the Territory of Oklahoma and the Indian Territory constitute the present State of Oklahoma; that the lands in the Indian Territory, owned by various Indian tribes, were, by agreement or treaties with the United States, to be allotted in severalty among the members of such tribes, with certain exceptions named in the treaties, which it is not necessary to set out here; that by said agreement or treaties the United States agreed to maintain strict laws in said Territory, particularly in the allotted lands, against the introduction, sale, barter or the giving away of liquors and intoxicants of any kind or quality; and, that pursuant to said agreement and treaties Congress, by the act of June 16, 1906, 34 Stat., Pt. 1, 267, c. 3335, § 3, made it a condition of the admission of Oklahoma into the Union as a State that it should provide by its constitution that "the manufacture, sale, barter, giving away or otherwise

furnishing, except as therein provided, of intoxicating liquors within those parts of the proposed State then known as the Indian Territory and the Osage Reservation and within any other parts of the proposed State which existed as an Indian reservation on the first day of January, 1906, should be prohibited for twenty-one years from the date of the admission of the State into the Union, and that in said act no reservation or exception was made whereby any one of the defendants might import into the said named portion of said State or in any other manner furnish any intoxicating liquors whatsoever, and the power to regulate interstate commerce in intoxicating liquor was thereby surrendered to the State of Oklahoma as to said portions of said State; and by the said act it was not provided that intoxicating liquor should be furnished to any person in what was formerly the Indian Territory, including the Osage Reservation and any other parts of the State which existed as Indian reservations on the first day of January, 1906, in the manner and form that the same is now furnished and imported by said defendants, as hereinafter more fully set forth, or in any other manner or form."

The bill also alleged that, by ordinance irrevocable, Oklahoma had accepted the terms and conditions of the act of June 16, 1906, including the provision relating to intoxicating liquors; and thereby the State was obligated in place of the United States, so far as the power was lodged in it, to carry out the treaties and agreements made with the said Indian tribes against the introduction, sale, or in any manner the furnishing of intoxicating liquors in what was formerly the Indian Territory; but that defendants, in violation of the law and the rights of said Indian tribes therein, and to the injury of the State of Oklahoma and its inhabitants have, since November 16, 1867, and up to this time, continuously violated all said provisions against furnishing, carrying and conveying beer, ale,

wine and intoxicating liquors into Indian Territory; that such violation of law deeply injures and irreparably destroys the good citizenship and property of the State and its inhabitants, and the defendants threaten to continue the same unless restrained; and that in continuing so to do, the defendants and each of them have committed acts that amount to the surrender and abandonment of their corporate right to be engaged and doing business in interstate commerce between the States, and against such acts the plaintiff has no adequate remedy according to the course of the common law.

The State also complains that various persons, about two hundred in number, within its limits (the names of such persons being all set forth in a list made part of the bill) have made payment of the special tax required of liquor dealers under the laws of the United States; that by the above act of Congress of June 16, 1906, it was made a condition precedent to the admission of Oklahoma into the Union that "in its constitution it should provide that the payment of the special tax required of liquor dealers by the United States, of any person within those parts of the proposed State then known as the Indian Territory and the Osage Reservation, and within any other parts of said proposed State which existed as Indian reservations on the first day of January, 1906, should constitute *prima facie* evidence of the intention of such persons to violate that provision of the act of June 16, 1906, in reference to the prohibition of the manufacture, sale, barter, giving away, or otherwise furnishing intoxicating liquors which it was provided as a condition precedent that the constitution of said proposed State should provide for."

The bill further shows that the State, through its Constitutional Convention, submitted to the popular vote the question of adopting a provision prohibiting the manufacture, barter, sale, giving away or otherwise furnishing



intoxicating liquors in the State, and the result was the approval by the electors of a constitutional provision of that kind which has been in force since November 16, 1907; that pursuant to that constitutional provision the legislature of the State, on March 24, 1908, Okla. Laws, 1907-8, p. 594, passed a general statute, establishing a state agency and local agencies for the sale of intoxicating liquors for certain purposes and prohibiting the manufacture, sale, barter, giving away or otherwise furnishing intoxicating liquors, except as provided in the act; that by the terms of said act (Art. 3, § 2) it was provided that "the payment of the special tax required of liquor dealers by the United States by any person within this State, except the local agents of said State by said act, should constitute *prima facie* evidence of an intention to violate the provisions of said act;" and that the defendants, each and all of them, had due notice in writing from the State, by its constituted authorities, of the provisions of the act of Congress, and of the constitution and laws of Oklahoma, referred to herein.

It should be here stated that the above Oklahoma statute of March 24, 1908, prescribed various penalties of fine and imprisonment for violations of its provisions.

The bill finally alleges that the State of Oklahoma gave to each of the defendants due notice that it would hold all shipments made by each of them "whereby either of them undertook to receive at points without the State of Oklahoma intoxicating liquors of any kind, and to transport, carry or otherwise convey such liquors or compounds to or to the order of any of the persons, companies, corporations, firms or associations named in said list, as illegal, contrary to good morals, against the public policy and in direct violation of the positive laws of the State of Oklahoma; that the importation of any prohibited intoxicating liquors to or to the order of any of said persons by either or any of said defendants was and is a public nui-

sance within the State of Oklahoma, and were not importations in good faith, intended for the use of the importer and consignee, and not for sale within the State; that all shipments or deliveries made by defendants by interstate shipment to any or all of the persons named in said list were intended for and were for the violation of the laws of the State of Oklahoma and to commit a public nuisance in said State; that the State of Oklahoma thereby was not undertaking to object or restrict the defendants in the importation of intoxicating liquors, by interstate shipment to any person in said State outside of what was formerly the Indian Territory, the Osage Indian Reservation and an Indian Reservation, January 1, 1906, intending it for his own use and not for sale in said State, but that under the law of said State each and all of said persons intended to use all the liquor in their possession to sell the same in said State in violation of its laws, and that any delivery of prohibited intoxicating liquors to any of said persons would have the necessary effect of aiding such consignee to violate the laws of the State of Oklahoma and would be a public nuisance and injury to the said State."

That in addition thereto under the terms of said Chapter 69 of the Session Laws of 1907-1908, of Oklahoma, as therein provided, the State of Oklahoma, for the benefit of its citizens, undertook to furnish intoxicating liquor to all persons in said State wherever a sale of the same was by the law authorized, for reason of necessary use of the same for preservation, or health, or like purposes, and that under the laws of the State of Oklahoma, the State of Oklahoma was the sole and only person authorized to sell liquors in said State; that the State is pecuniarily interested in the sale of said liquors and irreparably injured by said importation by defendants to the persons named in said list who had paid the special tax required by the United States of liquor dealers, in that the said importa-

tion to the said persons named on said list, being for the purpose of a resale of such importations in said State, operated to the injury to the exclusive right to the sale of intoxicating liquors in said State claimed and exercised by the State of Oklahoma.

That since the sixteenth of November, 1907, after the said notices were received by the said defendants and up to this time, the said defendants have continuously and continually, each and all of them, imported to and to the order of each firm and all of the persons named in said list as having paid a special tax as required by the United States of liquor dealers. And the said persons named in said lists have continued continuously to resell said intoxicating liquors so imported by the defendants; that the said resale has at all times been in violation of the laws of the State of Oklahoma and has been a cause of enormous expense and irreparable injury to the State of Oklahoma and the inhabitants thereof, and each and all of the counties and other municipalities therein, in that the enforcement of the laws against the sale of intoxicating liquors is extremely difficult, expensive and exhaustive and that the importation and furnishing to said persons named in said list by said defendants of such intoxicating liquors with the intent that the same shall be used for resale in the said State has caused a large imposition of expenses upon said State and a violation of its laws and a constant source of friction and corruption in its government and is against the peace and dignity of the government of said State, and totally against the public policy thereof and good morals therein, and is a public nuisance in said State; that the defendants in violation of law and in injury to the rights of the State and inhabitants thereof have openly, persistently and continuously imported intoxicating liquors, whose manufacture, sale, barter, or furnishing is prohibited by the laws of the State of Oklahoma to each and all of the persons named in said list b

furnishing, carrying and conveying the same to and to the order of each and all of the said persons named in said list on divers and sundry occasions continuously, and that defendants threaten to continue in the said violation unless restrained, and in continuing so to do said defendants, and each of them, have committed acts which amount to a surrender and an abandonment of their corporate right to do business in interstate commerce in the carriage of intoxicating liquors, and for the same the plaintiff has no adequate remedy according to the course of the common law for the reason that said shipments originate outside of the State."

The relief asked is that the defendants be severally enjoined and restrained from further introducing, conveying and furnishing intoxicating liquors, including ale, wine and beer *in any form, at any place, at any time, and in any manner* in the State within the limits of what was formerly the Indian Territory, including the Osage Reservation, and other parts of the State that existed as Indian reservations on the first day of January, 1900; that the several defendants be further enjoined from carrying, conveying, delivering, and furnishing intoxicating liquors, including ale, wine and beer, in any form and in any place, at any time or in any manner, in the State to any or all of the persons named in the above list as being persons who have paid the special tax required by the United States of liquor dealers; and that in default of obedience to the order of injunction prayed for the corporate rights of the defendants to do a business in interstate commerce with persons in Oklahoma be forfeited.

Such is the case made by the bill, and we come now to consider the controlling questions presented by it.

It is manifest that the object of this suit by the State, is, by means of an injunction issued by this court, to prevent the defendant companies from violating the penal or criminal laws of Oklahoma. It is, therefore, in its essence

a suit to enforce those laws. But of such a suit this court cannot take original cognizance, although the suit is in form of a civil nature. The Constitution after enumerating, in the first clause of § 2 of Art. III, the cases, in law and equity, as well as the controversies, to which the judicial power of the United States shall extend, provides that "in all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction"—in all the other cases enumerated in the Article the court to have appellate jurisdiction, both as to law and facts, with such exceptions, and under such regulations as Congress shall make.

The words "in which a State shall be party," literally construed, would embrace original suits of a civil nature brought by a State in this court to enforce a judgment rendered for a violation of its penal or criminal laws. But it has been adjudged, upon full consideration, that that result was inadmissible under the Constitution. This will appear from an examination of the opinion and judgment in *Wisconsin v. Pelican Insurance Co.*, 127 U. S. 265, 267, 290, 293. That was an original action brought in this court by the State of Wisconsin against the Pelican Insurance Company of Louisiana to recover the amount of a judgment rendered in a Wisconsin court against that company for certain penalties incurred by it for violating the laws of that State relating to the business of fire insurance companies. The question was distinctly presented whether the *State* could invoke the original jurisdiction of this court, to enforce the collection of such judgment. It was argued in that case that the suit was simply an action of debt, founded upon a contract of record, to wit, a judgment, and was, therefore, to be regarded only as a civil suit, as distinguished from a criminal prosecution. But that view was overruled. The court said that notwithstanding the comprehensive words of

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the Constitution, "the mere fact that a State is the plaintiff is not a conclusive test that the controversy is one in which this court is authorized to grant relief against another State or her citizens." After an examination of the authorities it was further said, the court, speaking by Mr. Justice Gray: "The rule that the courts of no country execute the penal laws of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue or other municipal laws, and to all judgments for such penalties. If this were not so all that would be necessary to give ubiquitous effect to a penal law would be to put the claim for a penalty into the shape of a judgment, Wharton's Conflict of Laws, § 833; Westlake's International Law, 1st ed., § 388; Piggott on Foreign Judgments, 209, 210." Further: "From the first organization of the courts of the United States, nearly a century ago, it has always been assumed that the original jurisdiction of this court over controversies between a State and citizens of another State, or of a foreign country, does not extend to a suit by a State to recover penalties for a breach of her own municipal law. . . . The real nature of the case is not affected by the form provided by the law of the State for the punishment of the offense. It is immaterial whether, by the law of Wisconsin, the prosecution must be by indictment or by action, or whether, under that law, a judgment there obtained for the penalty might be enforced by execution, by *scire facias*, or by a new suit. In whatever form the State pursues her right to punish the offense against her sovereignty, every step of the proceeding tends to one end, the compelling the offender to pay a pecuniary fine by way of punishment for the offense. This court, therefore, cannot entertain an original action to compel the defendant to pay to the State of Wisconsin a sum of money in satisfac-

tion of the judgment for that fine. The original jurisdiction of this court is conferred by the Constitution, without limit of the amount in controversy, and Congress has never imposed (if, indeed, it could impose) any such limit. If this court has original jurisdiction of the present case, it must follow that any action upon a judgment obtained by a State in her own courts against a citizen of another State for the recovery of any sum of money, however small, by way of a fine for any offense, however petty, against her laws, could be brought in the first instance in the Supreme Court of the United States. That cannot have been the intention of the Convention in framing, or of the people in adopting, the Federal Constitution." The principles announced in *Wisconsin v. Pelican Ins. Co.*, *supra*, have been recognized in many subsequent cases. *Postal Tel. Cable Co. v. Alabama*, 155 U. S. 482, 487; *California v. Southern Pacific Co.*, 157 U. S. 229, 259; *Missouri v. Ill. & Chic. Dist.*, 180 U. S. 208, 232; *Minnesota v. Northern Securities Co.*, 184 U. S. 199, 234, 235; *Kansas v. Colorado*, 206 U. S. 46, 83.

Those principles must, in our opinion, determine the present case adversely to the State. Although the State does not ask for judgment against the defendant railroad company for the penalties prescribed by the Oklahoma statutes for violations of its provisions, she yet seeks the aid of this court to enforce a statute one of whose controlling objects is to impose punishment in order to effectuate a public policy touching a particular subject relating to the public welfare. The statute viewed as a whole is to be deemed a penal statute. The present suit, although in form one of a civil nature, is, in its essential character, one to enforce by injunction regulations prescribed by a State for violations of one of its penal statutes and is, therefore, one of which this court cannot take original cognizance at the instance of the State.

But there is another ground which is equally fatal to the

claim that this court may give the relief asked by an original suit brought by the State. In the provisions of the Constitution relating to the judicial power of the courts of the United States it is provided, as we have seen, that "in all cases affecting ambassadors and other public ministers and consuls, and in those in which a State shall be party, the Supreme Court shall have original jurisdiction." In *Oklahoma v. Atchison, Topeka and Santa Fe Railway Company*, ante, p. 277, it was held that a State could not invoke the original jurisdiction of the court, by suit on its behalf, where the primary purpose of the suit was to protect its citizens, *generally*, against the violation of its laws by the corporations or persons sued; that the above words, "those in which a State shall be party," were not to be so interpreted as to embrace suits of that kind. We need not repeat what was said in the other case. Without stopping to consider other questions discussed by learned counsel, we hold, for the reasons stated in the opinion in that case, as well as because this suit is, in its essence and mainly, one to enforce a penal statute of a State, that the bill must be dismissed for want of jurisdiction in this court.

*It is so ordered.*